

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 GERALD JOHNSON, et al.,)
)
 Defendant.)

CRIMINAL NO.: JKB-16-0363
Jury Trial: Volume 7

Transcript of Proceedings
Before the Honorable James K. Bredar
Monday, December 4th, 2017
Baltimore, Maryland

For the Plaintiff:

Peter J. Martinez, AUSA

Christina A. Hoffman, AUSA

For Defendant Gerald Johnson:

Paul F. Enzinna, Esquire

Jeffrey B. O'Toole, Esquire

For Defendant Kenneth Jones:

Alan R.L. Bussard, Esquire

For Defendant Marquise McCants:

John R. Francomano, III, Esquire

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P R O C E E D I N G S

THE COURT: On the record in JKB-16-0363, United States versus Johnson, et al. We're ready to begin our trial day.

Mr. Martinez, trial was scheduled to begin this morning at 9:45. I understand there was a telephone conference between you and my chambers in reference to a sentencing that was set in for 9:30. Subsequent to that telephone conference, the sentencing had to be vacated because the Marshals were unable to get the defendant here for sentencing. My understanding of the conference was that you asked if the sentencing was going forward, my chambers confirmed that it was. And the best understanding from in chambers that I've received is that you were told that -- you asked if court would then begin around 10:00 and that's what was confirmed. Perhaps my chambers assistant should not have given you that advice, but regardless, it was 10:00, not 10:20.

MR. MARTINEZ: I apologize, Your Honor. When I did speak to chambers, I believe the conversation was, how long do you expect the sentencing to last, and I think she said 45 minutes. And I said, if we get there around 10:00, we should be okay. And when we came, we didn't see anything going on, so we thought we still had some time. We were just upstairs because we thought the sentencing was going to go until 10:15.

1 I apologize.

2 THE COURT: I'll address it on my end. But all of
3 us have to be attendant to the interests of jurors who've now
4 been sitting in there for probably 40 minutes. What's first
5 up this morning?

6 MR. MARTINEZ: Your Honor, we have some witnesses
7 lined up today. The first witness is Detective Sendy
8 Ferdinand of the Baltimore City Police Department. And I
9 don't know whether the Court wants to revisit the legal issue
10 that it raised at the end of the day Thursday. We're prepared
11 to do that whenever the Court is.

12 THE COURT: Not now given how much delay we've got.
13 Why don't you raise that at the end of the day. So ready?

14 MR. MARTINEZ: We are, Your Honor.

15 THE COURT: Let's bring them. And let's get the
16 witness in here.

17 (Jury entered the courtroom.)

18 THE COURT: What's her name again?

19 MR. MARTINEZ: It's a he. It's Sendy Ferdinand.

20 THE COURT: How do you spell the first name?

21 MR. MARTINEZ: S-e-n-d-y.

22 THE COURT: Spell the last name.

23 MR. MARTINEZ: F-e-r-d-i-n-a-n-d.

24 THE COURT: Good morning, ladies and gentlemen.
25 We're now ready to continue with the government's case in

1 chief.

2 The government may call their next witness.

3 MR. MARTINEZ: Your Honor, the government calls
4 Detective Sendy Ferdinand of the Baltimore City Police
5 Department.

6 THE COURT: Thank you. Detective Ferdinand, please
7 stand.

8 THE CLERK: Sir, if you would please raise your
9 right hand to be placed under oath.

10 DETECTIVE SENDY FERDINAND,
11 called as a witness, being first duly sworn, was examined and
12 testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Thank you, sir. You may have a seat in
15 the witness box. And if you would please adjust the
16 microphone, and if you would, speak directly into it. State
17 your first and last name and spell your first and last name.

18 THE WITNESS: Sendy Ferdinand,
19 S-e-n-d-y, F-e-r-d-i-n-a-n-d.

20 THE CLERK: Thank you, sir.

21 THE COURT: Mr. Martinez.

22 DIRECT EXAMINATION

23 BY MR. MARTINEZ:

24 Q Detective, good morning.

25 A Good morning.

1 Q Could you tell the ladies and gentlemen of the jury where
2 you work, please?

3 A Baltimore City Police Department.

4 Q And what's your rank and assignment?

5 A I'm assigned to the Investigative Intelligence Section,
6 which is IIS. It's undercover.

7 Q How long have you been with BPD?

8 A 16 years.

9 Q Could you walk the jury through the various positions
10 you've held at BPD?

11 A Yes, sir. I spent a year at the Northeast District,
12 about a year, year and a half as patrol. From there I went to
13 Flex, which is -- we specialize in high-crime areas. From
14 then I went to SET, which that was through the whole city of
15 Baltimore City. From SET I went to -- MET -- well, it was MET
16 first and then SET. And then from there I went to
17 Public Housing where I started my undercover career. From
18 Public Housing I went down to downtown where I've been ever
19 since.

20 Q Tell us about your work as an undercover officer, do you
21 make undercover purchases of narcotics?

22 A Yes, sir.

23 Q Have you made them in different neighborhoods in
24 Baltimore City?

25 A Yes, sir.

1 Q Have you made them in the Greenmount neighborhood of
2 Baltimore City?

3 A Yes, sir.

4 Q Detective, could you tell us what your rank and
5 assignment was as of September 2007?

6 A I was a detective assigned to Organized Crime Division.

7 Q And were you also working in an undercover capacity at
8 this time?

9 A Yes, sir.

10 Q I want to direct your attention to the afternoon of
11 September 28th, 2007. Were you working and on duty that
12 afternoon?

13 A Yes, sir.

14 Q Were you working in an undercover capacity?

15 A Yes, sir.

16 Q Directing your attention to approximately 1:50 on
17 September 28th, 2007, did there come a time where you went to
18 the 2400 block of Brentwood Avenue?

19 A Yes, sir.

20 Q Why did you go to the 2400 block of Brentwood Avenue?

21 A To purchase narcotics.

22 Q How did you get there?

23 A Drove. I drove my department vehicle, which is the
24 unmarked police car.

25 Q I want to show you Government's Exhibit GM 31. What are

1 we looking at there, Detective?

2 A The 2400 block of Brentwood.

3 Q And tell us what happened when you arrived in your
4 unmarked vehicle on this block on the afternoon of
5 September 28th, 2007.

6 A Yes. I drove up on Brentwood. As I was driving, I saw
7 the defendant that was standing in front of a house on
8 Brentwood.

9 Q And let me stop you for a minute. You said you saw the
10 defendant, could you point out which of the defendants you
11 saw?

12 A That would be the man right here with the blue sweater,
13 glasses, and cornrow, fish hair.

14 Q So you said you saw him in the 2400 block of
15 Brentwood Avenue?

16 THE COURT: We need some clarification on the record
17 as to who is being identified. Is there any objection?

18 MR. ENZINNA: No, Your Honor.

19 THE COURT: Let the record reflect that the witness
20 has identified Mr. Johnson. Continue.

21 A I made contact with Mr. Johnson. As I was driving, I
22 look up -- I look at him, we make eye contact. I kept
23 driving, turn into the alley. As I was turning into the
24 alley, I heard Mr. Johnson yelling out "yo." I stopped my
25 car, I went back to Mr. Johnson, and he asked me what I was

1 looking for, and I told him I was looking for ready.

2 Q (BY MR. MARTINEZ) Let me stop you for a moment. Do you
3 recall how Mr. Johnson was dressed on this particular
4 afternoon?

5 A Yes, sir.

6 Q Could you tell us what he was wearing?

7 A He had a white T-shirt, blue jeans; he had a bandana on
8 his head with cornrows going back.

9 Q Do you recall what color the bandana was?

10 A Black, I believe.

11 Q Before I stopped you a moment ago, you said that
12 Mr. Johnson asked you what you were looking for and you said
13 "ready"; right?

14 A Yes, sir.

15 Q Could you tell the ladies and gentlemen of the jury what
16 you meant by ready?

17 A Ready is a street term for crack cocaine.

18 Q And when you told Mr. Johnson that you were looking for
19 ready, what, if anything, did he say to you?

20 A He asked me how many and I told him I was looking for
21 two. He then told me to go into the alley, so I drove into
22 the alley and I stood --

23 Q Detective, let me stop you again. I just want to make
24 sure, when you said you were looking for two, what were you
25 conveying to Mr. Johnson?

1 A I was looking for two units of crack cocaine, which are
2 dimes.

3 Q And when you say dimes, what is a dime?

4 A \$10 units.

5 Q So is a dime the same as a dime bag?

6 A Yes.

7 Q All right. And I stopped you as you were explaining what
8 happened after you said that you wanted two.

9 A Yes. I went into the alley stood in the alley. By the
10 few -- I'm going to say few seconds, Mr. Johnson came and he
11 stood in the mouth of the alley. He told me to get out of the
12 car and I got out of the car and I approached him. He gave me
13 two clear Ziplocs, which contained white substance suspected
14 to be cocaine, and then in return I gave him \$20 and then I
15 got back into my vehicle.

16 Q All right. Detective, I want to show you what's been
17 marked as Government's Exhibit GM 32. Can you tell us what
18 we're looking at there?

19 A That's the alley that I went into and I parked my car.
20 Ran into the alley from right here and then when he came, he
21 stood in the mouth of the alley. He told me to get out of the
22 alley -- to get out the car, I got out of the car, and he
23 stood right here and we made the transaction.

24 Q All right. I want to show you what's been marked as
25 Government's Exhibit 1 -- I'll ask you to open the bag and

1 take out what's inside.

2 MR. ENZINNA: What exhibit number?

3 MR. MARTINEZ: 1.

4 A Okay.

5 Q (BY MR. MARTINEZ) Do you recognize the contents of that
6 bag in Government's Exhibit No. 1?

7 A Yes, sir.

8 Q What's in the bag?

9 A The bag contain the two Ziploc of cocaine that I
10 purchased from Mr. Johnson and also a picture of the
11 submission.

12 Q Okay. And in addition to that picture, I want to show
13 you a different picture that's been marked as
14 Government's Exhibit PHE 1. Is that a picture of the same
15 exhibit that you're holding in your hand?

16 A Yes, sir.

17 Q So after the transaction you just described with
18 Mr. Johnson in the alley in the 2400 block of Brentwood, what
19 happened when the deal was over?

20 A After the transaction I contact my cover team. I have
21 a -- which include my sergeant and several other detectives.
22 I called them on the phone and I told them that I had made a
23 purchase, it was a positive buy. And I told them exactly
24 where the purchase was made. And then I give them
25 Mr. Johnson's description and direction of travel, where he

1 was at the time. Then I after that, a few minutes later the
2 arrest team came to the location, to the block on Brentwood
3 where they located Mr. Johnson. After that my sergeant called
4 me so I can come and make a positive ID. I drove back in the
5 area, not on the block, but I was as close as where I can see
6 exactly who they had. And I positively identified Mr. Johnson
7 as the person that sold me the crack cocaine.

8 Q When you drove back to the scene and made the positive ID
9 of Mr. Johnson, had he been placed under arrest at that
10 time?

11 A He was -- I believe he was detained.

12 Q Okay. Did you later learn that he had been arrested?

13 A I'm sorry?

14 Q Did you later learn that he had been arrested?

15 A Yes.

16 Q The drugs that you bought from Mr. Johnson that you have
17 there as Government's Exhibit 1, what did you do with them
18 when the transaction was over?

19 A After the transaction was over it stayed with me and then
20 I went downtown to the office. I waited for my cover team to
21 come. After they did Mr. Johnson's paperwork, sent him down
22 to Central Booking, then we met up to headquarters where I
23 gave the drug to Detective Green and Detective Green submitted
24 the drugs to ECU.

25 Q And did you also submit the drugs to be analyzed by a

1 chemist with the Baltimore Police Department?

2 A Yes, sir.

3 MR. MARTINEZ: Your Honor, at this time I'd like to
4 read a paragraph, paragraph 1 from Stipulation 4 between the
5 parties.

6 THE COURT: Without objection. You may read it.

7 MR. MARTINEZ: Stipulation 1 reads as follows:
8 Government's Exhibit 1 is two Ziploc baggies containing rock
9 substance obtained in connection with Gerald Johnson's arrest
10 on September 28th, 2007. It is agreed and stipulated by the
11 parties that Ayesha Larkins of the Baltimore City Police
12 Department Laboratory Section analyzed Government's
13 Exhibit No. 1 and determined that it contains cocaine base a
14 Schedule II controlled substance. Ms. Larkins's drug analysis
15 report regarding Government's Exhibit No. 1 is admitted as
16 Government's Exhibit No. DL 1 without the necessity of her
17 testimony.

18 THE COURT: Ladies and gentlemen, you'll recall that
19 matters that are the subject of a stipulation are to be taken
20 as true or proven by you. Nothing for you to decide there.
21 That's just a fact.

22 Q (BY MR. MARTINEZ) Detective Ferdinand, now I'd like to
23 show you what we just referenced in the stipulation, what's
24 now been admitted into evidence as Government's Exhibit DL 1.
25 Do you recognize this exhibit, Detective?

1 A Yes, sir.

2 Q And is this a copy of Ms. Larkins's lab report with
3 respect to the drugs that you purchased from Mr. Johnson on
4 September 28th, 2007?

5 A Yes, sir.

6 Q And above the pen here, does the report indicate the
7 identity of the substance that Ms. Larkins examined that you
8 purchased from Mr. Johnson?

9 A Yes, sir.

10 Q And what substance is that?

11 A It's cocaine base, Schedule II.

12 Q Detective, I want to ask you, were you wearing a camera
13 of any kind during the transaction that you just described
14 with Mr. Johnson?

15 A Yes, sir.

16 Q Did you submit -- well, did the camera generate a
17 recording of the purchase?

18 A Yes, sir.

19 Q Did you submit the recording of the purchase to
20 Evidence Control after the purchase was completed?

21 A Yes, sir.

22 Q Can you tell us whether you charged Mr. Johnson with a
23 crime based on the undercover purchase we just went through?

24 A Yes, sir, I did.

25 Q Was he convicted of a crime?

1 A Yes, sir.

2 Q I want to show you now what's been marked as
3 Government's Exhibit SC 1. Do you recognize this document,
4 Detective?

5 A Yes, sir.

6 Q Is this a certified court record of the case that you
7 initiated against Mr. Johnson after the undercover purchase?

8 A Yes, sir.

9 Q So can you read the name here?

10 A Johnson, Gerald.

11 Q And then the offense charged, here above the pen?

12 A It's CDS, manufacture, distribute.

13 Q And then I'd like to --

14 THE COURT: What does CDS stand for?

15 THE WITNESS: I'm sorry?

16 THE COURT: What does CDS stand for?

17 THE WITNESS: Oh, controlled dangerous substance.

18 Q (BY MR. MARTINEZ) Is cocaine base a controlled dangerous
19 substance?

20 A Yes, sir.

21 Q And then under verdict here and G, does this reflect how
22 the case was disposed?

23 A Yes, sir.

24 Q What does verdict G mean?

25 A Guilty.

1 Q Detective, based on this disposition, did there come a
2 time when ECU discarded the video footage that you just
3 described that you submitted in connection with the undercover
4 purchase?

5 A Yes, sir.

6 MR. MARTINEZ: Court's indulgence. No further
7 questions, Your Honor.

8 THE COURT: Mr. Enzinna, cross-examination.

9 MR. ENZINNA: No questions, Your Honor.

10 THE COURT: Thank you. Mr. Bussard.

11 MR. BUSSARD: No questions. Thank you.

12 THE COURT: Mr. Francomano.

13 MR. FRANCOMANO: Yes.

14 CROSS-EXAMINATION

15 BY MR. FRANCOMANO:

16 Q Detective, my client, Mr. McCants, wasn't there that
17 day?

18 A No, sir.

19 MR. FRANCOMANO: Thank you.

20 THE COURT: Redirect, Mr. Martinez.

21 MR. MARTINEZ: No, Your Honor.

22 THE COURT: May the witness be excused, defense
23 counsel?

24 MR. ENZINNA: Yes, Your Honor.

25 THE COURT: Sir, you are excused, you may depart.

1 Next witness.

2 MS. HOFFMAN: The government will call
3 Special Agent Austin Sailor.

4 THE COURT: Austin Sailor. Please come all the way
5 up to our witness box, sir, stand there by the corner and face
6 our clerk.

7 THE CLERK: Sir, if you would please raise your
8 right hand to be placed under oath.

9 SPECIAL AGENT AUSTIN SAILOR
10 called as a witness, being first duly sworn, was examined and
11 testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: Thank you, sir. You may enter the
14 witness box.

15 MR. MARTINEZ: Your Honor, before the questioning of
16 the witness begins, can I ask if Special Agent Christy can
17 approach and clear the drug exhibit from the witness stand?

18 THE COURT: Yes. You may be seated.

19 THE CLERK: Sir, if you would please speak directly
20 into the microphone. State your first and last name and spell
21 your first and last name.

22 THE WITNESS: My name is Austin Sailor, A-u-s-t-i-n;
23 last name is Sailor, S-a-i-l-o-r.

24 THE CLERK: Thank you.

25 THE COURT: Your witness, ma'am.

DIRECT EXAMINATION

BY MS. HOFFMAN:

Q Good morning, Agent Sailor. Where are you currently employed?

A I'm currently as a special agent at Bureau of Alcohol, Tobacco, Firearms and Explosives in San Diego, California.

Q Is that commonly known as ATF?

A It is.

Q How long have you worked for ATF?

A Since April 29th of 2013.

Q Prior to that, did you work for the Baltimore City Police Department?

A I did. I was hired December of 2005 and I left in July of 2012. And then immediately lateraled over to Baltimore County Police Department where I worked until I was hired by the ATF.

Q And Agent Sailor, would you mind pulling the microphone a little closer to you as you speak.

THE COURT: Move yourself up, is the only option.

A Yes, I'll try to move myself also.

Q (BY MS. HOFFMAN) Can you walk us through the positions that you held with BPD?

A Yes. I initially was hired, went through the academy, and then started out as patrol in the Northwest District in the Park Heights area. And then moved over to

1 Violent Crime Impact Division, which was later renamed the
2 Violent Crime Impact Squad. From there I went to the
3 Violent Repeat Offender Unit and the Major Case Squad.

4 Q As of 2008, were you working in the
5 Violent Crime Impact Division?

6 A I was.

7 Q What were your responsibilities as part of the
8 Violent Crime Impact Division?

9 A We were doing target enforcement against street level
10 narcotics, violent offenders, and violent crime.

11 Q Were you assigned to a particular section of the city?

12 A Eastern District.

13 Q I want to draw your attention to June 6th of 2008 around
14 7:55 p.m.

15 A Okay.

16 Q Were you working and on duty at that time?

17 A Yes, I was.

18 Q Did there come a time when you witnessed suspected drug
19 activity?

20 A Yes.

21 Q Where were you at the time?

22 A I was in the 2200 block of Guilford Avenue. And I was
23 with my partner, Detective Jermaine Cook. We were in plain
24 clothes capacity in an unmarked vehicle in the 2200 block of
25 Guilford.

1 Q And what did you observe on the evening in question?

2 A So I observed in the cut on the west side of 2000 block
3 of Guilford two African American males standing in the cut.
4 One of the gentleman, who I -- was later identified as
5 Mr. Joseph Bonds, was looking around like this, looking like
6 he was looking for someone. And he reached into his pocket,
7 produced just a -- small objects that I believed to be
8 narcotics and street-level packaging. He then handed them to
9 the other gentleman, who took them, looked around, and then
10 walked to the north -- the wall on the north side of the cut
11 about ten feet away and placed the small objects in a hole in
12 the wall.

13 Q I'm going to show you Government's Exhibit No. GM, as in
14 Google maps, 19. What are we looking at here?

15 A That's the 2200 block of Guilford Avenue.

16 Q And I'm going to show you now Government's Exhibit GM, as
17 in Google maps, 18.

18 A All right. And that is the cut area that I was
19 describing in that same block.

20 Q And is that where you saw the two individuals you just
21 described?

22 A Yes.

23 Q Going to show you Government's Exhibit No. PHI, as in
24 photos of individuals, 6. Who are we looking at here?

25 A That's Mr. Joseph Bonds.

1 Q And is this the individual who you observed take
2 suspected CDS out of his pocket?

3 A Yes.

4 Q And I'm going to show you Government's Exhibit
5 No. PHI 77. Who are we looking at here?

6 A That's Mr. Jesse Tate.

7 Q And is Mr. Jesse Tate the individual you saw place those
8 objects into the hole in the cut?

9 A Yes.

10 Q Where were you relative to them when you observed this
11 activity?

12 A We were in the middle of the block about 40 feet away.

13 Q And I'll put Government's Exhibit GM 18 back up. And
14 after you observed Mr. Bonds hand these objects to Mr. Tate,
15 who then placed them in the hole in the wall, what did you do
16 at that point?

17 A Myself and Mr. -- excuse me, Detective Cook, exited our
18 vehicle, just approached Mr. Bonds and Tate and announced
19 ourselves as police. We had our badges in plain sight and had
20 the two gentleman sit down right there against the wall.
21 Detective Cook watched them, I went immediately to the hole in
22 the wall and recovered five orange top glass vials, which
23 contained a rock-like substance, which I suspected to be
24 cocaine.

25 Q Between the time when you first observed Mr. Tate place

1 those objects in the hole in the wall and the time when you
2 searched it, did you take your eyes off the location?

3 A No.

4 Q Were Mr. Bonds and Mr. Tate placed under arrest?

5 A Yes, they were.

6 Q Did you conduct a search of Mr. Bonds's person at the
7 time of his arrest?

8 A I did. And I recovered \$390 from his right pants
9 pocket.

10 Q What did you do with the recovered evidence in the
11 case?

12 A It was all submitted to the Baltimore City
13 Evidence Control Unit.

14 MS. HOFFMAN: At this time I'd like to read part of
15 Stipulation No. 4 into the record, specifically paragraph 2.

16 THE COURT: You may.

17 MS. HOFFMAN: Government's Exhibit No. DL 2 is a
18 laboratory report prepared by Marta Iwashko of the BPD
19 Laboratory Section analyzing five orange top vials containing
20 white rock substance obtained in connection with
21 Joseph Bonds's arrest on June 6th, 2008. It is agreed and
22 stipulated by the parties that Ms. Iwashko analyzed drug
23 evidence and determined that it contained cocaine, a Schedule
24 II controlled substance. Government's Exhibit No. DL 2 is
25 admitted into evidence without the necessity of testimony by

1 Ms. Iwashko.

2 Q (BY MS. HOFFMAN) And Agent Sailor, I'd like to now show
3 you Government's Exhibit No. DL 2. Agent Sailor, is this the
4 drug lab report corresponding to the evidence you recovered on
5 that day?

6 A Yes. It's on the top left corner, it says
7 Laboratory Section Drug Analysis Report. The same date,
8 6/6/08; from the same time; 2200 block of Guilford Avenue -- I
9 have number one, orange top vials with white rock substance,
10 five of them; and laboratory results/schedule are
11 cocaine/Schedule II.

12 Q Thank you. Now, I'd like to shift gears and draw your
13 attention to the evening of April 11th, 2011 around 7:00 p.m.
14 Were you still working in the Violent Crime Impact Division or
15 Section at that point?

16 A Yes. I think it was called Section at that point.

17 Q And were you still in the Eastern District?

18 A Yes, I was.

19 Q Were you working and on duty that evening?

20 A I was coming to the very end of my shift.

21 Q And where were you headed at around 7:00 p.m.?

22 A I was headed to get a -- get some dinner at the end of my
23 shift and I was heading westbound in the 900 block of
24 East North Avenue.

25 Q Did there come a time when you came into contact with a

1 person you've come to know as Kenneth Jones?

2 A Yes.

3 Q Is he sitting in the courtroom today?

4 A Yes. He is the gentleman in the pink shirt seated to my
5 left.

6 MR. BUSSARD: No objection.

7 THE COURT: Record will reflect that the witness has
8 identified Defendant Jones. You may continue.

9 Q (BY MS. HOFFMAN) Can you tell the ladies and gentlemen
10 of the jury how you came into contact with Mr. Jones that
11 evening?

12 A Okay. So I was stopped at the stoplight, which is at
13 Homewood Avenue. And it was kind of a -- strangely busy
14 traffic for what I thought that time of day. It was backed
15 up, so I was actually stuck in traffic right in front of
16 906 East North Avenue. It was a warm evening, so whenever it
17 was a warm evening, I would have my windows down. So I was
18 sitting there and I hear a bunch of yelling and screaming,
19 look over, and I observed a six-person fight. It was like
20 three on three. I believe it was three males versus -- the
21 other party was two males and one female. I knew it was
22 serious because I could actually hear the fists smacking on
23 meat. It was a (indicating), that type of noise. And I
24 thought to myself, this is not rough-housing, this is a
25 serious fight. So still had my radio.

1 Q Just want to stop you for a second there, Agent Sailor,
2 to show you Government's Exhibit GM, as in Google maps, 20.
3 It's a little grainy, but can you tell us what we're looking
4 at here?

5 A Yes. This is a picture of -- Google maps picture of the
6 streets where the incident occurred. So this is, as you can
7 see, with the annotation, 906 East North Avenue. I was -- may
8 I make a mark on the screen, Your Honor?

9 THE COURT: Yes.

10 A So I was right approximately there, just sitting in
11 traffic due to the red light with my windows down. So
12 Homewood Avenue where the light is, is right about --
13 actually, yeah, right around there, roughly. So you can see
14 that there was a good amount of traffic for it to be that far
15 backed up due to a red light.

16 Q (BY MS. HOFFMAN) Thank you. And can you tell the ladies
17 and gentlemen of the jury what you did when you observed this
18 brawl taking place at 906 East North Avenue?

19 A So I grabbed my radio, it was still next to me. I called
20 it in saying that there's a violent fight going on, gave the
21 hundred block, and I did my best to keep it in view. And I
22 didn't get out of my vehicle because I was alone. But I was
23 doing my best to call in backup, describing the fight. The
24 red light turned green, and because I was stuck in traffic, I
25 proceeded westbound trying to keep the fight in view. Still

1 had my radio in hand. And as I was keying up again, I heard
2 shots ring out.

3 Q Did you see who actually fired the shots?

4 A No, I did not.

5 Q And when you heard the gunshots, did you turn around?

6 A Yes. I called it in and then turned around. So because
7 I was progressing westbound, I made it through the light at
8 Homewood and immediately turned around. I'll do my best to
9 draw it. And in the beginning of the 700 block of
10 East North Avenue, I did almost a loop and then progressed
11 north. Now, while I was right around -- I'm sorry -- here,
12 and facing eastbound, I observed a -- the individual who was
13 later identified as Mr. Jones running westbound on the
14 sidewalk. And he was -- and then turned northbound on
15 Homewood Avenue.

16 Q Was Mr. Jones running from the direction of where you
17 observed the brawl?

18 A Yes, he was.

19 MR. BUSSARD: Objection.

20 THE COURT: Basis.

21 MR. BUSSARD: Leading.

22 THE COURT: Overruled.

23 A Yes, he was. He was wearing blue jeans, a white T-shirt,
24 and kind of a pastel pink colored hat.

25 Q (BY MS. HOFFMAN) Did you observe Mr. Jones doing

1 anything while he ran?

2 A Yes. He was holding -- he was running at what I believed
3 to be full speed. It looked like he was sprinting and he was
4 holding his waistband, dip area, with his left hand, which I
5 observed people in the past, you know, holding firearms in
6 that very same position.

7 Q (BY MS. HOFFMAN) And you used the term "dip area," and
8 could just explain to the members of the jury what the dip
9 area is?

10 A The waistband crotch area. I'll stand up and just
11 demonstrate. So it was just holding -- he was running,
12 holding this area with his left hand (indicating).

13 Q What happened once you turned onto Homewood Avenue?

14 A Mr. Jones went to the west side of the street, he was
15 still running in the street but on the west side of the
16 street. I was progressing north but on the east side of the
17 street. So I pulled up next to him, right around -- I'll do
18 my best to -- there, to that area. He was, like I said, still
19 on the east side of the street. I was beside him -- pardon
20 me, he was on the west side of the street, I was on the east
21 side of the street beside him. So he was basically running
22 beside my driver's side window. So I immediately stopped the
23 car, I still had my badge on, I identified myself as police.
24 And I -- because I thought he was armed because of how he was
25 holding his hand, I immediately drew my service weapon and

1 pointed it at him.

2 Q Did Mr. Jones say anything at that point?

3 A He raised his hands and immediately said "don't shoot me,
4 I have a gun."

5 Q At that -- sorry, Agent Sailor. At that point did you
6 give Mr. Jones an order?

7 A Yes. I directed Mr. Jones to keep his hands up and to
8 lie down on the street and he complied. There was no use of
9 force needed whatsoever.

10 Q What did you do then?

11 A I called in for backup, I gave my position, and I could
12 already hear the sirens that other -- that sounded like there
13 was a lot of units coming to that area.

14 Q And did back-up units arrive on the scene?

15 A Yes, they did.

16 Q Once back-up units arrived was Mr. Jones placed in
17 handcuffs?

18 A Yes, he was placed in handcuffs. And --

19 Q What did you do then?

20 A Asked him where the firearm was. And he kind of kicked
21 his left leg, and so I, you know, felt on his pants leg. It
22 was his lower calf area. And I could feel what felt like a
23 handgun wedged into the lower calf area of his pants.

24 Q And at that point did you retrieve the firearm?

25 A Yes. At that time we didn't know what type of firearm it

1 was. We didn't know, you know, what we were working with,
2 whether it was safe. So in order to be safe, the pants leg
3 was cut. We didn't want to try to remove it and have an
4 accidental discharge. So the pants leg was cut and the
5 firearm was safely removed.

6 Q Going to show you Government's Exhibit PHCS, as in photos
7 of crime scenes, 3-2. Well -- sorry, I'll start with 3-3.

8 THE COURT: Let's clear the screen.

9 Q (BY MS. HOFFMAN) What are we looking at here?

10 A That was Mr. Jones handcuffed laying on the ground.
11 Can't really see it very well in the picture, but the firearm
12 is still -- the pants leg is cut open and the firearm is still
13 there right next to his leg, inside of his pants leg.

14 Q And let me show you Government's Exhibit No. PHCS 3-2.

15 A Right. And that was Mr. Jones again with the pants leg
16 cut open. You can see the revolver, you know, as it was when
17 we cut open the pants leg.

18 Q Was the firearm recovered?

19 A Yes, it was.

20 Q And going to approach and show you

21 Government's Exhibit 8.

22 MS. HOFFMAN: And Your Honor, may I ask to have this
23 exhibit made safe?

24 THE COURT: Yes. Will the Marshal examine the
25 exhibit and make sure that it is safe. Marshal, is the

1 exhibit safe?

2 THE MARSHAL: It has been made safe.

3 THE COURT: You may proceed, ma'am.

4 Q (BY MS. HOFFMAN) And Agent Sailor, feel free to open up
5 the bag there, and if you could identify this exhibit for us.

6 A This was the firearm that was recovered from Mr. Jones on
7 the night of the incident that we're discussing.

8 Q And what kind of firearm was it?

9 A It's a .357 magnum Taurus revolver.

10 Q At the time you recovered it, was it loaded?

11 A Yes. It had four spent shell casings and one live
12 round.

13 Q And what are spent shell casings?

14 A They're bullets that have been fired, they're the casings
15 left over from firing bullets.

16 Q Were Miranda warnings delivered to Mr. Jones?

17 A Yes, they were.

18 Q And did you hear Mr. Jones make any statements after
19 Miranda warnings were delivered?

20 A Lieutenant Miller, who was our boss at the time, came up
21 and while I was working with this firearm and I was focused on
22 the firearm, but Lieutenant Miller came up and he asked --
23 there were about six or seven of us, he said, is this the
24 suspect for the shooting. And Mr. Jones replied to him, "he
25 shot at me first."

1 Q Is that an exact quote or is that --

2 A That's roughly from my recollection, but that's roughly
3 what he said.

4 Q Did you remain on the scene after that?

5 A I did for a while, you know, made sure that the evidence
6 was handled properly, that the firearm was run to check for
7 stolen. You know, oversaw that Mr. Jones got into police
8 transport. And then at that time I was, you know, instructed
9 just to go back to the Eastern District and begin writing my
10 report.

11 Q Did you ever respond to the scene of the actual
12 shooting?

13 A No, I did not.

14 MS. HOFFMAN: Court's indulgence.

15 THE COURT: Yes.

16 Q (BY MS. HOFFMAN) Going to show you Government's
17 Exhibit No. PHE, as in photos of evidence, 8. Can you tell us
18 what we're looking at here?

19 A This is the same revolver, Taurus revolver, that was
20 recovered from Mr. Jones during this incident. It has the
21 property division evidence property tag.

22 Q Thank you.

23 MS. HOFFMAN: I have no further questions, but I
24 will approach and retrieve the exhibit from you.

25 THE COURT: Mr. Enzinna.

1 MR. ENZINNA: No questions, Your Honor.

2 THE COURT: Mr. Bussard.

3 MR. BUSSARD: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BUSSARD:

6 Q Good morning, Special Agent Sailor.

7 A Good morning.

8 Q I'm going to show you some exhibits and then we'll talk a
9 little bit. Showing you what's been marked as -- I think it's
10 Defendant's Exhibit 2, and ask you if based on your testimony,
11 are you familiar with the 900 block of East -- well, before I
12 show it, East North Avenue?

13 A Yes.

14 Q Okay. And we're looking at Jones Defendant 2, is that an
15 accurate representation of the 900 block of
16 East North Avenue?

17 A It appears to be. It's at a pretty, you know, good
18 distance, so it would be better if I saw the actual numbers on
19 the buildings, but roughly.

20 Q Not really trying to trick you, just --

21 A Okay.

22 Q Has it changed at all since 2011 in any way?

23 A I'm not sure, sir. You know, I'm in San Diego now, so
24 it's been a number of years since I've been through there.

25 Q Showing you what's been marked as Defense Exhibit 3. And

1 we'll -- you said you would like to see the numbers on them,
2 can you read the numbers on the house?

3 A Could you blow it up a little bit, bring it in a little
4 bit.

5 Q You're asking me to do something with this machine --
6 does that help?

7 A I believe it says --

8 Q Let me see if I can get any closer.

9 A I believe it could say 906, is that what we're going for?
10 If that's truly 906, I'll agree that it's 906, but it
11 appears --

12 THE COURT: Can't answer the question that way. Are
13 you able to say what those numbers are?

14 A Not really.

15 THE COURT: Sort of speaks for itself, whatever it
16 is, it is.

17 Q (BY MR. BUSSARD) Thank you. Now, you --
18 Special Agent Sailor, you indicated that on April 11th, 2011,
19 you were traveling westbound on East North Avenue; is that
20 correct?

21 A Yes, sir.

22 Q Okay. And East North Avenue is two lanes going east and
23 two lanes going west?

24 A Yes.

25 Q Cars parked along the side of the street?

1 A Correct.

2 Q Showing you what's been marked as Defense Exhibit
3 No. 4 -- Kenneth Jones Exhibit No. 4. And ask you, is that an
4 accurate representation looking westbound on
5 East North Avenue?

6 A It appears to be.

7 Q Now, along the side -- on the left side over here, what
8 is --

9 A That's the cemetery.

10 Q Okay. And that runs along the south side of
11 East North Avenue?

12 A Yes, sir.

13 Q Correct. And then there's row houses, for the most
14 part?

15 A Correct.

16 Q On the --

17 A North side.

18 Q -- north side of East North Avenue; is that correct?

19 A Yes.

20 Q And showing you what's been marked as Defense
21 Exhibit 5 -- Kenneth Jones Exhibit 5, this is a little bit
22 different view than the government showed you. This is
23 906 East North Avenue?

24 A Appears to be.

25 Q And the first cross street if you were traveling

1 westbound, that would be this direction; is that correct?

2 A Yes, sir.

3 Q And that's the direction you were traveling that day?

4 A Correct.

5 Q The first street you come to is Oakville Avenue?

6 A Oakhill Avenue.

7 Q Oakhill, excuse me. And then there's another block of
8 row houses?

9 A Yes, sir.

10 Q And then the -- can you see it on your screen, is this
11 Homewood Avenue?

12 A Yes, it is.

13 Q And this is the intersection where you indicated there is
14 a traffic control device?

15 A Yes.

16 Q A stoplight?

17 A Yes.

18 Q And then you're indicating that this -- that you made the
19 stop of Mr. Jones around Homewood and 20th Street?

20 A No, it was a little bit farther south. It was right
21 around --

22 Q You can take your finger if you want.

23 A I'll do my best. It was right around here.

24 Q So about a block and a half north of East North Avenue,
25 give or take?

1 A Um --

2 Q There's a cross street in there?

3 A Yeah, I mean --

4 Q Well, I'm going to show you --

5 A It seemed like a short block. I wouldn't necessarily say
6 a block and a half, it was right where I just drew.

7 Q Showing you Defense Exhibit 6. Can you see that,
8 Special Agent?

9 A Yes. That's the traffic control device, the stoplight at
10 Homewood Avenue.

11 Q So the car I have my pen on is traveling westbound on
12 East North Avenue?

13 A It appears to be.

14 Q And this is Homewood Avenue then going north?

15 A Yes, it is.

16 Q Correct, and these are the traffic control devices?

17 A Yes.

18 Q One last picture. You said there was a stop around --
19 northbound on Homewood Avenue?

20 A Yes.

21 Q And showing you what's been marked as Defense Exhibit 7.
22 Is this --

23 THE COURT: Jones No. 7.

24 Q (BY MR. BUSSARD) Jones No. 7, an accurate representation
25 looking northbound?

1 A It's looking northbound. It appears to be a little bit
2 far north of where the stop happened.

3 Q Is there anything unique about if -- if the picture was
4 pulled back, looking at the bottom of the picture,
5 Homewood Avenue looks about the same though; is that
6 correct?

7 A Yeah. I mean, just while, you know, I was pursuing
8 Mr. Jones, to the left you see the grassy corner of the lot
9 below the one way arrow. I remember while he was running --
10 that's an empty lot, if you see, like, a Google maps picture.
11 And I was worried that while he was running maybe he would cut
12 through that lot and I was trying to figure out how I was
13 going to navigate my vehicle to pursue him through the lot,
14 whether I should go up through the grass. I was worried if
15 I'd pop a tire or am I going to make this turn here and go
16 like that, you know, and I was trying to figure out in the
17 middle of the pursuit, what's the best way to keep this guy in
18 my view so I don't lose him.

19 Q Showing you -- going back to Defense Exhibit 5.

20 A Right.

21 Q The empty lot, I think you indicated that the stop was
22 around this area.

23 A No. The stop was -- see, there's an alley here and
24 there's an alley here, the stop happened right around here.
25 You can see the difference between Homewood and Oakhill.

1 Look. Homewood has this empty lot, which I was just talking
2 about. Oakhill does not have an empty lot. There's houses
3 still there. The empty lot on Homewood is from houses being
4 torn down. This right here is the empty lot that I'm
5 discussing when I was saying I was concerned about the
6 direction of travel where I thought Mr. Jones may run.

7 Q So the stop was before the empty lot?

8 A Correct. It was just right around -- just before this
9 second alley right there.

10 Q Let's go back for a few moments. You had left the
11 Eastern District -- nothing specific, you didn't have a
12 specific reason for going on East North Avenue and
13 westbound --

14 A It was just one of my main, you know, ways of traveling
15 to work, from work, during work. It's a main thoroughfare. I
16 typically drove -- you know, I lived in the city at the time.
17 And I drove to the Eastern District to get to work on
18 North Avenue and I drove home using that same route going back
19 home on North Avenue. And it was just, like I said, a main
20 thoroughfare that I was on all the time during my work hours
21 as well.

22 Q So you're in the 900 block of East North Avenue;
23 correct?

24 A Correct.

25 Q And the traffic light, which is about a block and a half

1 in front of you, stops traffic, traffic backs up to the 900
2 block?

3 A On that night it did.

4 Q Which is unusual but it did?

5 A I mean, I thought, you know, that it was strange that it
6 was backed up that far.

7 Q And you weren't paying attention to anything in
8 particular until you heard sounds; is that correct?

9 A Right. I mean, I was just kind of paying attention to
10 traffic. I was kind of like winding down near the end of my
11 shift, you know, and just at the stoplight.

12 Q So if you're stopped in the 900 block, and I'm showing
13 you Jones Exhibit 2, your car is out in this travel lane?

14 A Right. I was in the travel lane -- we would call it the
15 No. 2 lane, it would be the northbound lane furthest away from
16 the double yellow lines. The travel lane closer to the
17 sidewalk.

18 Q And your attention is drawn to the smacking sound that
19 you've already talked --

20 A Right, the yelling and the sounds of a violent
21 altercation.

22 Q And you made a call at that time; is that right?

23 A Correct.

24 Q And am I correct, you have no recollection of seeing
25 somebody in a pink hat over there at the --

1 A It was such a violent altercation that, you know, I don't
2 recall, you know, the descriptions of any of the individuals
3 involved, only that it was a six-person fight, three on three,
4 and one of them appeared to be a female.

5 Q So you heard hollering and yelling; correct?

6 A Yes.

7 Q And you heard punching?

8 A Correct.

9 Q Right. And you're in a plain unit?

10 A Right, plain clothes unit.

11 Q So if anybody was looking around, they wouldn't know that
12 you were a police --

13 A No. I would have blended in with all the other, you
14 know, people in traffic that day.

15 Q Did you have -- was the unit still equipped with lights
16 that you --

17 A No.

18 Q -- could have turned on?

19 A No. I had no lights, no sirens. So you know, we rented
20 our vehicles, it was a rental vehicle.

21 Q And did -- well, the light turns green?

22 A Correct.

23 Q And so you are proceeding into the left; is that
24 correct?

25 A Correct.

1 Q And showing you Defense Exhibit --

2 Jones Defense Exhibit No. 4, so if this is the 900 block, you
3 proceed down past Oakhill; is that correct?

4 A Correct.

5 Q And around -- as you enter that second block, you hear
6 what you believe to be gunfire; correct?

7 A That sounds about right, yeah, beginning of the second
8 block.

9 Q And --

10 A The next block.

11 Q Is it fair to say you didn't see anybody actually --

12 A No, I did not see the shooting, I only heard it.

13 Q And when you turned your head -- going back to when you
14 were still at a stationary position, stopped position, when
15 you turned your head and looked towards the yelling and
16 screaming, you didn't see anybody pointing guns at that point?

17 A No.

18 Q Is that correct?

19 A No.

20 Q So you get down there and you hear a rapid fire
21 gunshot?

22 A I heard rapid firing. You know, just as if there were a
23 lot of round -- there was a -- rounds being fired quickly.

24 Q Like a semi-automatic handgun?

25 A It -- I wouldn't call it a semi-automatic handgun. I

1 mean, any number of firearms -- you know, it's just as fast as
2 the trigger is pulled, can be pulled, is how the rounds went,
3 you know. And that can happen with a revolver as well. It's
4 just how quick you pull the trigger.

5 Q The gun that you did ultimately retrieve though was not a
6 semi-automatic; is that correct?

7 A It was a revolver.

8 Q Revolver. Now, you didn't see Kenneth Jones actually
9 throw any punches over at that fight?

10 A No, I did not.

11 Q And you didn't see him kick anybody?

12 A No, I did not.

13 Q And you didn't see him point a gun at anybody?

14 A No, I did not.

15 Q And did you ever hear anybody yell, call the police, or
16 anything like that while you were sitting in that stationary
17 position in front of 906?

18 A No.

19 Q So you go down the street. Looking again at
20 Mr. Jones's Exhibit No. 5, you're -- this is the intersection;
21 is that correct?

22 A Correct.

23 Q I can get you a better picture.

24 A Yeah, that's a -- focus on that one is little --

25 Q Showing you Mr. Jones's Exhibit -- Defense Exhibit No. 5,

1 this is the traffic control device; is that correct?

2 A Correct.

3 Q So by your description earlier, you made a U-turn about
4 where my pen is?

5 A Correct.

6 Q And as you came -- you were back facing eastbound?

7 A Yes.

8 Q This direction, you saw Mr. Jones running this way?

9 A Correct. I saw him running westbound on the sidewalk of
10 the 800 block of East North Avenue.

11 Q And that's the first sighting you had of Mr. Jones;
12 correct?

13 A That I recall, yes.

14 Q And then he turns northbound on Homewood?

15 A Yes.

16 Q Correct. And as you see him running, he's holding his
17 left waistband area?

18 A Correct.

19 Q Correct. You describe it as the dip, you didn't describe
20 that as a dip in your offense report --

21 A It's just dip is kind of a common law enforcement, not
22 even just Baltimore City, but law enforcement terminology for
23 that area.

24 Q When you eventually pulled up beside him, I think you
25 said he was on your side of your vehicle?

1 A Yes. He was on the west side and I was on the east side.
2 So you know, I was looking out, you know, to the left out of
3 my driver's side window and he was approximately six feet
4 away.

5 Q Happened very quickly, you get out of the car, radio in
6 one hand?

7 A Correct.

8 Q I think you testified and you had your service weapon in
9 the other hand --

10 A Correct.

11 Q -- is that correct?

12 A Yes.

13 Q And you immediately asked Mr. Jones or ordered Mr. Jones
14 to stop?

15 A Yes.

16 Q He did stop?

17 A He did.

18 Q You then ordered him to get on the ground and he did get
19 on the ground?

20 A Right. He complied.

21 Q And then did you have to ask him, were you armed or did
22 he volunteer that?

23 A He just -- like I said, you know, when I initially
24 addressed him, identifying myself as police, you know, I had
25 my service weapon out and pointed at him and he brought his

1 hands up and said, you know, "don't shoot me, I have a gun,"
2 something to that effect, and immediately complied and when I
3 instructed him to get on the ground.

4 Q And you didn't -- the last motion you saw with his left
5 hand was up around his left waste area; is that correct?

6 A Right. His front like belt, waist area, as I
7 demonstrated to the jury before.

8 Q You didn't see him as he was running down there trying to
9 fiddle with the bottom, the shin area of his pants?

10 A No. What I took as -- what happened was, when he brought
11 his hands up, the firearm slid down his waistband area and
12 lodged into his left calf.

13 Q But as you said that, that -- you don't know for a
14 fact --

15 A Right. I don't have x-ray vision, I can't see through
16 blue jeans.

17 Q And as a result of arresting -- you did arrest
18 Mr. Jones?

19 A Yes.

20 Q As a result of arresting Mr. Jones, you prepared a
21 statement of charges?

22 A I did.

23 Q He was charged with various possession charges relating
24 to the firearm; is that correct?

25 A Correct.

1 Q And you also prepared an offense report, an incident
2 report, I guess it's called?

3 A Yes, I did.

4 Q And when Mr. Jones was running northbound on
5 Homewood Avenue, you saw the pink hat; is that correct?

6 A Correct.

7 Q And that's the first time you had seen the pink hat, I
8 guess, was when you saw him running on North Avenue before he
9 turned?

10 A Correct.

11 Q And he has his left hand on his waist?

12 A On his -- yeah, belt line, dip area.

13 Q And when you stop him though, the firearm is tightly
14 wedged in the bottom of his jeans?

15 A Right.

16 Q Down in the shin area?

17 A In the shin area.

18 Q And did you try to push it out of the bottom area?

19 A No, just -- I didn't try to push it out. Just out of
20 concerns for safety, I knew -- I felt it, it was wedged down
21 there, you know, obviously the thigh area of blue jeans are
22 wider than the calf area of blue jeans, just how they're
23 constructed. But I didn't know the make, model, anything
24 about this firearm, I was concerned if I forced it in any
25 direction that it could have an accidental discharge. And I

1 thought that the safest way to do it would be to cut it out of
2 the calf of the jeans.

3 Q I guess my question is, it didn't just keep on slipping
4 as you said, slipping out, it wasn't -- you couldn't see any
5 part of that gun sticking out of the lower part of his
6 pants?

7 A I couldn't see any part of the firearm until the calf of
8 the blue jeans were sliced open.

9 Q It was in there pretty snug; is that right?

10 A Right. When it fell down the -- it appeared -- I'm
11 guessing it fell down the thigh area, and because the thigh is
12 bigger and got smaller into the calf area, that's where it got
13 wedged into.

14 Q So when it's wedged in there, Mr. Jones didn't have very
15 good access to it either?

16 A No.

17 Q So it was "snug," is the right word?

18 A Yes.

19 Q Now, you've testified that after you arrested Mr. Jones
20 and were you the one that was -- or read him the Miranda
21 rights?

22 A No, it was one of the other detectives.

23 Q But you heard that?

24 A I heard it, yes.

25 Q And you've testified that Mr. Jones allegedly made a

1 statement after his arrest?

2 A Yes.

3 Q And thinking back to your incident report and statement
4 of charges, this is a yes or no question, did you note those
5 statements in his -- in the reports that you wrote?

6 A No, I did not. But I want to specify that. I gave
7 you -- I said no. But at that time I was focused on the
8 firearm, rendering it safe, running it, and I was not a part
9 of that conversation. Therefore, I put in what I was
10 responsible for at that time, which was the firearm.

11 Q So in an offense report and statement of charges, you
12 write down what you saw with your own eyes; correct?

13 A Correct.

14 Q You write down what you did as a police officer; is that
15 correct?

16 A Correct.

17 Q And you write down what you heard, which is Mr. Jones
18 saying "don't shoot, I have a gun"; correct, you did say
19 that?

20 A Yes.

21 Q Now, this other statement, however, that "he shot at me
22 first," does not appear in any of your reports, does it?

23 A Not in my personal reports. There were other reports
24 written by other detectives that I do believe have that
25 statement.

1 MR. BUSSARD: Objection, Your Honor.

2 THE COURT: Sustained. Just answer the question
3 that's put to you. Go ahead, Mr. Bussard.

4 Q (BY MR. BUSSARD) You did not write a report noting any
5 of those statements; is that correct?

6 A I did not. I focused on my portion of the
7 investigation.

8 Q And are you aware that Mr. Jones was eventually convicted
9 of possession of a firearm from April 11th, 2011?

10 A That's my understanding, yes.

11 MR. BUSSARD: I have no other questions,
12 Your Honor.

13 THE COURT: Mr. Francomano.

14 MR. FRANCOMANO: No questions, Your Honor.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MS. HOFFMAN:

18 Q Just briefly, Agent Sailor. You were asked whether you
19 later learned that Mr. Jones was convicted of handgun
20 possession and I want to show you what's been marked as
21 Government's Exhibit No. SC 11. Can you tell what we're
22 looking at here?

23 A It says 4/11/17; criminal court of Baltimore; there's the
24 case number; defendant Kenneth Jones.

25 Q I'm going to turn to the next page.

1 A All right. Same thing, then it says, handgun on person;
2 verdict G for guilty.

3 Q Can you read the defendant's name at the top?

4 A Yes, Kenneth Jones.

5 Q And if you could read the date for us too.

6 A 4/11/17, the same as the incident, and then date down at
7 the bottom is March 13th, 2012, it appears.

8 Q Thank you. No further questions.

9 MR. BUSSARD: No further questions.

10 THE COURT: May the witness be excused?

11 MR. FRANCOMANO: Yes, Your Honor.

12 THE COURT: You may be excused, sir. You may
13 depart. Next witness.

14 MR. MARTINEZ: Your Honor, may we approach?

15 MR. BUSSARD: Your Honor, may I also retrieve an
16 exhibit?

17 THE COURT: Yes.

18 (Bench conference on the record.)

19 MR. MARTINEZ: Agent Christy, is in contact with our
20 next two witnesses, neither of them came to the courthouse at
21 this moment. I understand that Sergeant Landsman is on his
22 way and within a few minutes, I hope. And then Corporal Finch
23 from the Elkton Police Department was supposed to be here this
24 morning, which I haven't seen him yet. So we're -- do what we
25 can to make sure that they're here as soon as possible. In

1 light of that --

2 THE COURT: You're going to be saved by the break.
3 In general, you've got to have them here. We can take a
4 break.

5 MR. MARTINEZ: I understand.

6 (The following proceedings were had in open court.)

7 THE COURT: Ladies and gentlemen, we'll take the
8 morning recess. During the recess do not discuss the case
9 with anyone. Do not discuss it even among yourselves. Do not
10 allow yourselves to be exposed to any news articles or reports
11 that touch upon the case or the issues it presents or any
12 articles or reports that relate to any of the participants in
13 the case. Avoid all contact with any of the participants in
14 the trial. Do not make any independent investigation of the
15 law or facts of the case. Do not look up anything related to
16 the case on the internet. Do not consult an encyclopedia or a
17 dictionary. 15 minutes. We'll reconvene at 11:50. Please
18 take the jury out.

19 (Jury left the courtroom.)

20 THE COURT: What will be the subject of the
21 testimony of the next couple witnesses?

22 MR. MARTINEZ: Sergeant Landsman's going to testify
23 about the 2011 homicide of Henry Dominic Mills, his
24 investigation of that crime. Corporal Finch from the
25 Elkton Police Department will testify --

1 THE COURT: From which police department?

2 MR. MARTINEZ: The Elkton, Maryland.

3 THE COURT: The Elkton Police of the Harford County
4 stuff, Cecil County.

5 MR. MARTINEZ: Correct.

6 THE COURT: Got it. 15 minutes.

7 (A recess was taken.)

8 THE COURT: Ready for the jury?

9 MR. MARTINEZ: We are. I don't know what the
10 Court's preference is, either after they come out or before,
11 Sergeant Landsman is going to be testifying about a homicide.
12 We do have a couple of crime scene and autopsy photos that we
13 want to introduce through him. I thought maybe the most
14 efficient way to address them would be to do it either now or
15 at the bench.

16 THE COURT: Yes, outside their hearing. Let's do it
17 now. Let me see it. Be seated, please. Have I heard about
18 this murder before?

19 MR. MARTINEZ: It's the 2011 murder of victim H.M.
20 that was committed by Mr. Hunter. Your Honor did hear about
21 it at a re-arraignment, but I don't think we've featured it
22 otherwise.

23 THE COURT: Okay. It wasn't in one of the motions
24 hearing.

25 MR. MARTINEZ: No.

1 THE COURT: Okay.

2 MR. MARTINEZ: Can I approach?

3 THE COURT: Yes. Counsel have seen these, know what
4 we're referring to, or you need to be up here?

5 MR. O'TOOLE: I think those were sent to us over the
6 weekend.

7 MR. MARTINEZ: Yes.

8 MR. O'TOOLE: There's only one, Your Honor, that I
9 had a question about.

10 THE COURT: Okay. So and are these the trial
11 exhibit numbers AP-1, AP-2, and PHCS 9-1, PHCS 9-2, PHCS 9-3.
12 Okay. So these are autopsy shots?

13 MR. MARTINEZ: Yes, Your Honor.

14 MR. O'TOOLE: The picture to your left, Your Honor,
15 my argument would be that that picture is just simply
16 unnecessary. It's a picture of a dead man's face, apparently.
17 The picture next to your right is the picture apparently with
18 the bullet wound where he was shot, which I think is relevant
19 and we're not objecting to -- I'm not objecting to that
20 portion. This one, I think is just gratuitously a picture of
21 a dead man, his face. I don't think it's probative of
22 anything except that he's dead and we certainly know that.
23 Those we do not object to. But the one with the bullet wound
24 in the back of his head appears to be one that could be
25 important to see.

1 THE COURT: All right. Counsel, any other defense
2 counsel have any other objections to any of the pictures?

3 MR. O'TOOLE: The one I identified, Your Honor, for
4 the record, is AP 3-1.

5 MR. BUSSARD: Your Honor, on behalf of Mr. Jones,
6 we're objecting for the same reason.

7 THE COURT: Only to AP 3-1 and you do not object to
8 the other four exhibits that are in question here?

9 MR. BUSSARD: That's correct.

10 THE COURT: Mr. Francomano.

11 MR. FRANCOMANO: Same, on behalf of Mr. McCants.

12 THE COURT: So in looking at AP 3-1, there is
13 nothing about this image that is gruesome. It doesn't reflect
14 anything that is horribly bloody or reflective of great
15 trauma. In fact, it's not even crystal clear that the
16 individual depicted is deceased, although once that
17 information is supplied, one can certainly see how he may well
18 be. But given that the allegation is homicide and that that
19 is at the core of what this part of the case is about, the
20 depiction of someone who is deceased is not inconsistent with
21 that. So the motion to exclude Exhibit AP 3-1 on 403 grounds,
22 which I understand is the basis --

23 MR. O'TOOLE: Yes.

24 THE COURT: -- is denied. Okay. And please give
25 me -- Mr. Martinez, you'll be conducting this examination?

1 MR. MARTINEZ: I will.

2 THE COURT: You'll give me some kind of indication
3 that we're going there, because I want to warn the jurors.

4 MR. MARTINEZ: Sure. And Your Honor, while we're
5 waiting for the jury, just for the record, I heard a question
6 raised by defense counsel as to whether Sergeant Landsman will
7 be back later in the case. For the Court's benefit, we are
8 going to recall him to testify about later events.

9 THE COURT: Okay. And Sergeant Landsman is purely a
10 fact witness in this trial?

11 MR. MARTINEZ: Correct.

12 THE COURT: Okay. Now are we ready for the jury?

13 MR. MARTINEZ: We are.

14 THE COURT: And is Landsman next?

15 MR. MARTINEZ: Yes.

16 THE COURT: Okay. Let's get him in here and get the
17 jury in.

18 (Jury entered the courtroom.)

19 THE COURT: Government may call their next
20 witness.

21 MR. MARTINEZ: Your Honor, the government's next
22 witness is Sergeant Joseph Landsman of the Baltimore Police
23 Department.

24 THE COURT: Sergeant Landsman, please face our
25 clerk.

1 THE CLERK: Sir, if you would -- thank you.

2 SERGEANT JOSEPH LANDSMAN

3 called as a witness, being first duly sworn, was examined and
4 testified as follows:

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: You may enter the witness box and watch
7 your step. And Sergeant, if you would please speak directly
8 into the microphone, state your first and last name and spell
9 your first and last name.

10 THE WITNESS: Joseph Landsman, J-o-s-e-p-h,
11 Landsman, L-a-n-d-s-m-a-n.

12 THE CLERK: Thank you.

13 THE COURT: Mr. Martinez.

14 DIRECT EXAMINATION

15 BY MR. MARTINEZ:

16 Q Sergeant, good afternoon.

17 A Good afternoon.

18 Q Can you please tell us where you work?

19 A Baltimore Police Department, Federal Bureau of
20 Investigations, FBI, Safe Streets Task Force.

21 Q So you're employed by both the BPD and the FBI; is that
22 right?

23 A Yes, sir.

24 Q With the BPD what is your rank and assignment?

25 A Police sergeant in the Operation Intelligence Division.

1 Q How about the FBI, what is your title there?

2 A Police sergeant in the Task Force.

3 Q So do I understand correctly that you're deputized to the
4 FBI as a Task Force officer; is that right?

5 A Yes, sir.

6 Q All right. Could you tell us how long you've been with
7 the Baltimore Police Department?

8 A Since July of 2000.

9 Q How about the FBI, how long have you been with them?

10 A Since October of 2015.

11 Q Could you please walk us through the positions you've
12 held over the course of your career with the BPD?

13 A During my career with the police department, I worked in
14 the Eastern District Patrol. From -- in 2004, I went from the
15 Eastern District Patrol to the Citywide Operations Unit, which
16 worked in public housing properties around the city. In
17 November 2007, I was assigned to the Homicide Unit until
18 December of 2011 when I was promoted to police sergeant. And
19 when I was promoted to sergeant, I went back to
20 Western District Patrol Unit. And I worked in patrol as a
21 supervisor until 2012, when I was assigned to the
22 Pennsylvania Avenue initiative, which worked along the
23 Central District -- Central and Western Districts,
24 Pennsylvania Avenue corridor. In 2013, I was assigned as a
25 supervisor in the District Detective Unit. I worked out of

1 Eastern District and I supervised nonfatal shooting
2 investigations, robberies, and burglaries. In 2014, June of
3 2014, I was assigned to a Cease Fire Initiative. And in
4 October of 2015, I was assigned to the FBI Safe Streets Task
5 Force.

6 Q All right. Thank you. So you indicated that you were a
7 homicide detective between 2007 and December of 2011; is that
8 correct?

9 A That's correct.

10 Q So were you working in that capacity in June of 2011?

11 A Yes, I was.

12 Q I want to direct your attention to the afternoon of
13 June 14th, 2011. Did there come a time that afternoon when
14 you responded to the scene of a homicide?

15 A Yes.

16 Q Where was the scene of the homicide?

17 A The 2400 block of Greenmount Avenue, which is in the
18 Eastern District, east side of Baltimore City.

19 Q I want to show you what's already been admitted as
20 Government's Exhibit GM 10. And I want to ask if you can use
21 your finger on the touch screen and show the jury where the
22 scene of the homicide was.

23 A (Indicating.)

24 Q All right.

25 A So 2400 block of Greenmount Avenue and it would have been

1 on the even side of the street but between 25th Street and
2 24th Street and Greenmount Avenue.

3 Q And is the even side of the street actually on the west
4 side of Greenmount, Sergeant?

5 A This -- yes, the west side.

6 Q Sergeant, during your years as a BPD officer, have you
7 become familiar with the 2400 block of Greenmount Avenue?

8 A Yes, I have.

9 Q Is it a busy street?

10 A It is.

11 Q Could you tell us what time you arrived on the scene of
12 this homicide?

13 A About 1:20 p.m.

14 Q Were other officers present when you got there?

15 A Yes, they were.

16 Q How about the victim, was he present when you got
17 there?

18 A Yes, he was.

19 Q And where was the victim when you got there?

20 A Was in the Baltimore Police Department medic, the
21 transport ambulance.

22 Q Were you able --

23 A The Baltimore City medic, not the police medic. But he
24 was in the ambulance getting ready to go to the hospital.

25 Q Were you able to identify the victim, Sergeant?

1 A Yes.

2 Q Who was it?

3 A Henry Dominic Mills.

4 Q Did Mr. Mills go by any nicknames?

5 A Nique.

6 Q I want to show you Government's Exhibit PHI 59. Who's
7 that?

8 A Henry Mills.

9 Q Sergeant, while you were on the scene of the homicide,
10 did you recover any ballistic evidence?

11 A Yes, I did.

12 Q What did you recover?

13 A Two spent .40 caliber casings and fragments.

14 Q Were photographs taken at the scene of the homicide?

15 A Yes, they were.

16 Q I'm going to show you Government's Exhibit PHCS 9-1. And
17 I'll ask you what we're looking at here, let's start with the
18 top.

19 A Top photograph is the sidewalk, blood and markings for
20 evidence that was going to be recovered. And that's the --

21 Q And I'll zoom in on the bottom photo, clear for the jury.
22 What are we looking at here, Sergeant?

23 A It's a photograph facing north on the 2400 block of
24 Greenmount Avenue towards the west side of the street and the
25 crime scene where Henry Mills was lying.

1 Q I'm going to show you Government's Exhibit PHCS 2. This
2 top photo here, what's depicted in this photo, Sergeant?

3 A In this photograph it's facing south towards the west
4 side of the 2400 block of Greenmount Avenue. And the crime
5 scene, same photograph different angle.

6 Q And Sergeant, as we look south, could you tell us
7 whether -- is there a liquor store on this particular block of
8 Greenmount Avenue?

9 A Yes. On the left side of the street, the
10 Greenmount Liquors.

11 Q Okay. And a little further south is there also a park on
12 this particular portion of Greenmount Avenue?

13 A Yes, there is.

14 Q Could you circle the park?

15 A (Indicating.)

16 Q What is the park called?

17 A Mund Park.

18 Q Now I'm going to move to the bottom photo, PHCS 9-2.
19 What are we looking at there, Sergeant?

20 A It's the evidence marker for one of the fired .40 caliber
21 casings that was recovered from the sidewalk of the 2400 block
22 of Greenmount Avenue.

23 Q Finally, for the crime scene photos, I'm going to show
24 you PHCS 9-3. Zoom in. What's depicted here, Sergeant?

25 A It's another fired .40 caliber casing that's in the

1 street in the 2400 block of Greenmount Avenue.

2 Q Sergeant, you said a moment ago that the victim,
3 Mr. Mills, was in the medic unit when you arrived at the
4 scene, did you later learn more about his condition?

5 A Yes.

6 Q What did you learn?

7 A The doctor pronounced Henry Dominic Mills dead at
8 Johns Hopkins Hospital.

9 Q And was evidence recovered from Mr. Mills at the
10 hospital?

11 A Yes, there was.

12 Q What was that?

13 A Clothing, three gelatin capsules of suspected heroin, and
14 money.

15 Q Did you later attend Mr. Mills's autopsy, Sergeant?

16 A Yes, I did.

17 Q Did you learn the cause of Mr. Mills's death?

18 A Yes.

19 Q What was it?

20 A Homicide by gunshot wound.

21 MR. MARTINEZ: And Your Honor, with the Court's
22 permission I'd like to read a paragraph, paragraph 3 of
23 Stipulation 3 into evidence at this time.

24 THE COURT: Without objection.

25 MR. O'TOOLE: No objection.

1 MR. FRANCOMANO: No objection.

2 MR. MARTINEZ: Paragraph 3 of Stipulation 3 reads as
3 follows: Government's Exhibit AR 3 is an autopsy report
4 prepared by Dr. James Locke of Maryland's OCME, the Office of
5 the Chief Medical Examiner, in connection with the death of
6 Henry Mills on June 14th, 2011. It is agreed and stipulated
7 by the parties that Locke determined that Mills's manner of
8 death was homicide and cause of death was a gunshot to the
9 head. Government's Exhibit AR 3 is admitted into evidence
10 without the necessity of testimony by Dr. Locke.

11 THE COURT: Thank you. That's a matter of
12 stipulation, ladies and gentlemen. Take it as true.

13 Q (BY MR. MARTINEZ) Sergeant, I want to just show you for
14 the record now Government's Exhibit AR 3. Do you recognize
15 this?

16 A Yes.

17 Q Is this a copy of Dr. Locke's autopsy report for
18 Mr. Mills?

19 A Yes, it is.

20 Q Sergeant, I want to show you now Government's Exhibit
21 AP --

22 THE COURT: Ladies and gentlemen --

23 MR. MARTINEZ: Sorry, Your Honor.

24 THE COURT: -- I always try to give you a little
25 advanced notice when you're going to see graphic photos so you

1 can brace yourself, and you will now see two graphic
2 photographs. Go ahead.

3 Q (BY MR. MARTINEZ) Sergeant, I'm putting
4 Government's Exhibit AP 3 back on the screen and I'll ask you
5 if you recognize this picture here.

6 A Yes, I do.

7 Q What are we looking at?

8 A It's Henry Dominic Mills as he is photographed at the
9 medical examiner's office.

10 Q I'll show you now Government's Exhibit AP 3-2 and I'll
11 ask you what this picture shows.

12 A It's a photograph of the gunshot wound to Henry Mills,
13 the back of his head.

14 Q Sergeant, I want to talk to you now about your
15 investigation of this homicide. As part of your
16 investigation, did you gather surveillance footage from
17 cameras in the area of the homicide?

18 A Yes, I did.

19 Q Can you tell the jury whether there's a closed circuit
20 television camera near the intersection of Greenmount Avenue
21 and 25th Street?

22 A There is.

23 Q Did you obtain footage from that camera as part of your
24 investigation?

25 A Yes.

1 Q Now, I want to put a photo back on the screen here, it's
2 PHCS 2. I want to focus your attention on the liquor store
3 that you pointed out earlier, that's the building with the red
4 awning; is that correct?

5 A Yes.

6 Q Did you obtain footage from a surveillance camera at
7 Greenmount Liquors as part of your investigation?

8 A Yes, I did.

9 Q And then you also indicated when we were looking at this
10 photo that just past the liquor store a little further south
11 on Greenmount is Mund Park; is that right?

12 A Correct.

13 Q Can you tell the ladies and gentlemen of the jury whether
14 there's a CCTV camera in the area of Mund Park?

15 A There is.

16 Q Did you obtain footage from that camera as well as parts
17 of your investigation?

18 A Yes.

19 Q Okay. Let's start by talking about the CCTV footage from
20 the intersection of Greenmount and 25th. Did that camera
21 capture any footage that was relevant to your investigation?

22 A Yes, it did.

23 Q And were you able to generate still images or screenshots
24 from portions of that relevant footage?

25 A Yes.

1 Q I want to show you some of the still images now, start
2 with Government's Exhibit PHCS 13-1. Can you tell us who
3 we're looking at here, Sergeant?

4 A Yes. On the -- in the darker clothing is the victim,
5 Henry Mills. And they are walking in the 400 block of
6 East 25th Street towards Greenmount Avenue.

7 Q And how about the gentleman in the white, were you able
8 to identify that person?

9 A Yes. Jerome Page.

10 Q I'll show you now Government's Exhibit PHCS 13-2. Is
11 this another still image that was captured by the same
12 camera?

13 A Yes, it is.

14 Q And is it correct that the camera rotates or pans so that
15 it takes shots from different angles of the intersection?

16 A Yes.

17 Q So tell us in what direction the camera is facing, what
18 street are we looking at here?

19 A The camera in this photograph is facing south into the
20 2400 block of Greenmount Avenue.

21 Q And who are we looking at that's spotlighted in the
22 middle there?

23 A The shooter, identified as David Hunter.

24 Q And can you tell us when in relation to the murder the
25 footage that generated that still shot was taken?

1 A Minutes before the murder.

2 Q I want to move on now to the footage from the liquor
3 store surveillance camera. First I'm going to approach and
4 show you the Government's Exhibit CD 2. Sergeant, do you
5 recognize that disk?

6 A Yes.

7 Q Does that contain footage from the Greenmount Liquors
8 surveillance camera?

9 A Yes.

10 Q Prior to coming into court today, did you review the
11 footage on that disk?

12 A Yes, I did.

13 Q I'd like to play that video for you now. Just give me a
14 moment, we need to switch the input on our screen.

15 The screen appears to be blank. Ms. Hoffman, if you
16 could rewind to the very beginning and pause immediately.

17 All right. Sergeant, could you tell us who in the top
18 middle portion of the screen -- I'll ask you, if you can, to
19 circle that individual with your finger on the touch screen.
20 That doesn't work?

21 A No, it's not working.

22 THE COURT: Maybe it doesn't work when you're in
23 this function. I'm not sure what the answer to that is. I
24 thought it did.

25 THE CLERK: It should work, Your Honor. I think

1 unfortunately it froze again.

2 THE COURT: Let's see if we're totally frozen or if
3 you're going to be able to operate without the marking
4 function.

5 THE CLERK: Sir, do you mind making a mark on the
6 screen?

7 THE WITNESS: Yeah, it looks like --

8 THE COURT: Just mark the screen, draw a circle in
9 the middle of it.

10 THE WITNESS: There's several marks.

11 THE COURT: I think it's suspicious. It's making up
12 its own mind about which marks its accepting.

13 THE CLERK: Your Honor, it's not even responding to
14 my command to clear.

15 THE COURT: Completely frozen.

16 THE CLERK: It's frozen, Judge.

17 THE COURT: Counsel, you can approach.

18 (Bench conference on the record.)

19 THE COURT: Call IT. All right. How dependant upon
20 the images are you for the next portion of this testimony, is
21 it something you can --

22 MR. MARTINEZ: This next portion I do think it will
23 be helpful to the jury for the sergeant to be able to point
24 out who he's looking at. And they're going to see clips in a
25 few minutes that are especially pertinent and some of the

1 footage because it's zoomed in, we're going to show some gif
2 files, so those are a little grainy.

3 THE COURT: So the images are your evidence, is what
4 you're trying to say?

5 MR. MARTINEZ: Part of it, yes.

6 THE COURT: We've had nothing but trouble with this
7 system for two years in this courtroom. We redid it
8 completely, we fixed -- went through a trial month ago, it
9 worked pretty well. It seems to be on the switch between the
10 two functions that it gets discombobulated. What's their --
11 do they -- they have a short-term solution?

12 THE CLERK: Reboot.

13 THE COURT: Rebooting. Go ahead, start now, start
14 to reboot.

15 THE CLERK: The husher will turn off if I reboot. I
16 just want to let you know.

17 THE COURT: That's fine. You can resume your
18 positions.

19 (The following proceedings were had in open court.)

20 THE COURT: Ladies and gentlemen, to move ahead here
21 we really need the technology working in the courtroom. So we
22 are going to sit tight for a moment and see if a reboot will
23 fix our problems. That has on occasion been a successful
24 strategy. So we'll just wait.

25 (Pause in the proceedings.)

1 THE COURT: We're back on the record.

2 Mr. Martinez.

3 Q (BY MR. MARTINEZ) Sergeant, before the break, I was
4 asking you about the individual who's depicted in the -- on
5 the top of the screen, in the center of the screen, and I was
6 asking you to circle that individual with your touch screen.

7 A Yes, sir. (Indicating.)

8 Q Were you able to identify that person?

9 A Yes, I was.

10 Q Who is that?

11 A Henry Mills.

12 Q How about the woman in -- or the person in red across the
13 street, were you able the identify that person?

14 A Yes, I was.

15 Q Who is that?

16 A Sharon Hawkins.

17 Q Now, if you would, with your finger show us where on this
18 screen the actual homicide occurred.

19 A Well, the homicide occurs in that top area where I made
20 the marking on the left side of the 2400 block of
21 Greenmount Avenue.

22 Q Let me clear this now.

23 And if you could resume the tape.

24 (Video played.)

25 Q (BY MR. MARTINEZ) All right. Sergeant, I'll ask you to

1 circle -- do you see the two people at the top, they're kind
2 of small?

3 A Yes.

4 Q Can you circle them?

5 A (Indicating.)

6 Q Who are those people, were you able to identify them?

7 A On the right side in the darker clothing is Henry Mills,
8 on the left side in the white T-shirt and gray sweatpants is
9 Jerome Page.

10 Q And so these are the same two individuals that we looked
11 at in the still image that were on 25th Street from the other
12 camera at the intersection of Greenmount and 25th; is that
13 correct?

14 A That's correct.

15 Q Let's resume the tape.

16 (Video played.)

17 Q (BY MR. MARTINEZ) Sergeant, it looks like the top of the
18 footage is cut off on the screen.

19 A When you clear the stuff at the bottom, then it shows up.
20 Now it's full screen.

21 Q All right. Are you able to show us, on this screen can
22 you circle the area where you believe the homicide occurred?

23 A (Indicating.) In that area, on the sidewalk.

24 Q And the excerpt we just watched, are you able to tell us
25 what was happening with respect to those two people who were

1 walking north on Greenmount?

2 A As Henry Mills and Jerome Page were walking north, you'll
3 see the other individual who's pictured from the CCTV camera
4 at that other angle, walking south on the west side of 2400
5 block of Greenmount Avenue. That individual passes
6 Henry Mills and Jerome Page, then turns back and fires the
7 gunshot and Henry Mills collapses there in the 2400 block of
8 Greenmount Avenue.

9 Q All right. Sergeant, I want to play the remainder of
10 this tape in a moment. Before I do I want to ask you, in
11 addition to the footage we're watching here, which is the raw
12 footage, did you also participate in generating smaller
13 excerpts or clips which were converted into gif files?

14 A Yes, I did.

15 Q We'll watch those as well. But first, let's go ahead and
16 resume this tape.

17 (Video played.)

18 Q (BY MR. MARTINEZ) Can you tell us what you saw?

19 A Henry Mills and Jerome Page passed that individual and
20 that individual turned back and fires a gunshot.

21 Q Can you circle the area where that's occurring?

22 A (Indicating.)

23 Q All right. Go ahead and continue the tape.

24 (Video played.)

25 Q (BY MR. MARTINEZ) I'll direct you to the top right-hand

1 corner of the screen, Sergeant, do you see the individual
2 who's crossed in front of a truck?

3 A Yes, I do.

4 Q Can you circle him, please?

5 A (Indicating.)

6 Q Were you able to identify that person?

7 A Yes.

8 Q Who is it?

9 A David Hunter.

10 Q All right. Go ahead and run the rest of the tape.

11 (Video played.)

12 Q (BY MR. MARTINEZ) Sergeant, now I want to approach and
13 show you Government's Exhibit CD 13. Do you recognize this
14 disk?

15 A Yes.

16 Q Does this disk contain the graphical interchange
17 formatting or gif files that were generated in excerpts from
18 the footage that we just watched?

19 A Yes, it does.

20 Q I'll go through some of these with you. These we'll just
21 play on a continuous loop.

22 All right. Sergeant, as this plays, the gentleman
23 walking backwards across the street, that's the person you
24 identified as Mr. Mills; right?

25 A Right.

1 Q And the woman in red, that's Sharon Hawkins?

2 A Yes.

3 Q Let's go to the next one.

4 MR. O'TOOLE: Ask to approach, Your Honor.

5 THE COURT: Stop the tape. You may approach. Clear
6 the image. Thank you.

7 (Bench conference was had on the record.)

8 MR. O'TOOLE: Your Honor, as we look at the titles
9 of the gif pieces, we're going to see two of them refer to my
10 client as doing something. I think it says dancing, Geezy
11 dancing or something else. These are perceptions by somebody
12 who decided to title certain gif portions as certain things.
13 So my objection is that, is there a way for the government to
14 put these on, if they're going to put them on, without having
15 the title, which tells the jury what somebody who titles these
16 videos thought they saw. It's not this witness.

17 THE COURT: Right. It's a 21st century problem we
18 have with the presentation of electronic evidence. I don't --
19 I wasn't going to say anything unless defense counsel said
20 something. But it's perfectly possible that just through the
21 labels that are thrown up on the screen that we've got
22 prejudicial information that's being pushed at the jury that
23 really isn't in the form of evidence and has to be filtered
24 out. Now, if it's information that's inconsequential, like
25 computer language or codes or that sort of thing, the fact

1 that it's up there, even though it's not in evidence, really
2 is of no great significance.

3 But when -- through the labeling and titling of
4 exhibits we start to have characterizations of what it is that
5 that bit of electronic media actually shows, we're starting to
6 interfere with the process. And now we've got an objection
7 along those lines. I didn't happen to notice that particular
8 reference. What I saw that was troubling me was a description
9 of the overall piece of video as murder flight. Now, I
10 suppose if Mr. Hunter himself were on trial here there may
11 have been an immediate objection from his lawyer, but this is
12 obviously relevant evidence because it relates to the overall
13 activities of the group. So any concern that Mr. Hunter might
14 have had at that reference would, it seems to me, be shared by
15 defense counsel.

16 MR. O'TOOLE: Yes, sir.

17 THE COURT: On the other hand, no one objected with
18 respect to that, so the Court didn't intercede at that point.
19 Now we have a reference to something that to me seems a little
20 more innocuous, a label that says "dancing." I don't know how
21 prejudicial that is on its face, maybe in context it would be
22 because of the subject matter that's being portrayed and maybe
23 dancing would be thought to be inappropriate. Regardless, it
24 is a label. Is there some way for the government to display
25 their admissible relevant electronic media without placing the

1 labels in front of the jury? That's the question.

2 MR. MARTINEZ: There is, and I think all that is
3 required in order to do that is for us to be able to bring
4 back the window with the labels and perhaps Ms. Hoffman can do
5 it so that her --

6 MS. HOFFMAN: Disconnect.

7 MR. MARTINEZ: Yes. Unplug her laptop so it's not
8 displaying on the screen and we'll just relabel the titles of
9 the gif files so that the jury doesn't see the titles. We're
10 happy -- if the Court thinks appropriate to instruct the jury
11 to disregard anything they may have seen in the titles of the
12 files, we think that's appropriate as well.

13 MR. O'TOOLE: We'd join that.

14 THE COURT: Okay. But are you able to do this in
15 real-time, just rolling forward here?

16 MS. HOFFMAN: Yeah, I just need to disconnect from
17 the thing and then relabel them.

18 THE COURT: So how long is that going to take you to
19 do?

20 MS. HOFFMAN: Maybe two minutes.

21 THE COURT: Why don't you get back and work on that.
22 And meanwhile, I will craft the instruction. And I'm going to
23 explain exactly what the nature of the problem is to give them
24 an explanation of why we are doing what we are. Any objection
25 to that?

1 MR. O'TOOLE: No objection.

2 MR. BUSSARD: No, Your Honor.

3 MR. FRANCOMANO: No, Your Honor.

4 THE COURT: Okay.

5 (The following proceedings were had in open court.)

6 THE COURT: Ladies and gentlemen, we have a very
7 sort of 21st century type issue. This is not a huge deal at
8 this point, but it's something that needs to be addressed. In
9 the old days, which qualifies as 25 years ago when I became a
10 trial lawyer, there weren't any TV screens in courtrooms. We
11 didn't even imagine such things. Instead we worked with paper
12 exhibits and passed out photographs and the witnesses marked
13 on the photograph and then the photograph got published to the
14 jury and was passed to the jury box. And there were some real
15 advantages to that old system. For instance, you didn't end
16 up wasting 15 minutes every trial day because the technology
17 breaks and we can't figure out how to turn it back on and
18 there was some other things.

19 There's some real advantages to the modern approach,
20 which is that we don't have to pass papers among the jurors,
21 we can move more quickly when the technology is working. In
22 general, this is I guess, progress. One of the things that
23 comes with this progress is the fact that lots of things show
24 up on the screen in front of jurors beyond just the exhibit or
25 the photograph or the image that the judge has ruled is

1 appropriate for the jurors to see. For instance, right now if
2 you look at your screens, you'll see a bunch of basically
3 indices of things that could be shown to you if somebody were
4 to click on them. In general, we allow that to occur even
5 though that information isn't really in evidence because it's
6 not relevant to anything and it's not prejudicial one way or
7 the other.

8 But little bit more of a problem area when we see
9 the -- a lawyer's sort of menu of items that they could click
10 on and play for you, and then that lawyer has put labels on
11 them. Like there was a label left in front of you a little
12 while ago related to that little image that said "murder
13 flight" or "flight from a murder," and that was the title that
14 a lawyer put on that particular video segment. So the concern
15 that I have with counsel is putting those sorts of titles in
16 front of you. Whether that's "flight from a murder" is for
17 you to decide, not for somebody to put a title on and tell you
18 that that's what that is. You might say, well, that's sort of
19 a subtle point. Well, it is a subtle point. But labels
20 matter when they start to have information contained in them.

21 So I'm giving you this long explanation in part
22 because the government needs some time and they're taking
23 advantage of this time while I'm speaking to you to eliminate
24 their labels. So that instead, we're going to have images
25 come up that don't have little descriptions on them. And you

1 decide yourself what it is, as opposed to somebody else
2 putting a title on it. All right. Was that a long enough
3 speech to give you the opportunity to do what you need to do?

4 MS. HOFFMAN: Yes.

5 THE COURT: She told me two and a half minutes, so I
6 tried to speak for exactly two and a half minutes. Are we
7 back on the record, ready to go back on the record?

8 MR. MARTINEZ: We are, Your Honor.

9 THE COURT: Okay. Mr. Martinez.

10 Q (BY MR. MARTINEZ) Sergeant, we have now put back on the
11 video screen here the same loop that we were looking at just a
12 moment ago. And I want to ask you, on your screen, if you
13 would draw a wide circle so that you don't make any markings
14 on the area where the activity is actually occurring. Would
15 you isolate for the jury the area where you believe the
16 homicide is occurring?

17 A Yes, sir. (Indicating.)

18 Q Could you tell us what we're looking at in that area?

19 A It's the loop of -- as Henry Mills and Jerome Page are
20 walking north on that west side of 2400 block of
21 Greenmount Avenue, they pass the other individual, who was
22 seen from the CCTV camera angle walking south on that west
23 side of 2400 Greenmount Avenue. When that individual passes
24 Henry Mills and Jerome Page, he then turns back and that's
25 when the gunshot is fired into Henry Mills.

1 Q All right. Sergeant, I want to move to the next gif
2 file. All right. Sergeant, this one is grainy, obviously
3 because of the zoom, but as this plays on a loop, could you
4 explain what we're looking at here and identify the area where
5 the relevant footage is taking place?

6 A So it's the same video with -- it's blown up at the top
7 left-hand portion of the video, still at 2400 block of
8 Greenmount Avenue. And it's a better video of as Henry Mills
9 and Jerome Page walk past and then that other individual
10 passes and turns back and you can see at the last second when
11 Henry Mills's body collapses.

12 Q Okay. Let's move to the next one. All right. Sergeant,
13 as this plays on a loop, can you tell us what you see
14 occurring? At the top of the screen you have that truck
15 that's stopped and the gentleman runs out in front of it.
16 What's happening in this portion of the tape?

17 A The shooting has occurred and that individual is running
18 from the shooting, crossing the 2400 block of
19 Greenmount Avenue from the west side of the street to the east
20 side of the street and continuing south in the 2400 block of
21 Greenmount Avenue.

22 Q Okay. We have one more gif from this tape to play for
23 you. What did we just see there, Sergeant?

24 A That individual continuing to run south onto the east
25 side of the 2400 block of Greenmount Avenue, grabbing the left

1 side of his clothing.

2 Q Okay. If we can take the gif file down.

3 And I want to show you -- did you also participate in
4 generating still photograph images from the footage we just
5 looked at?

6 A Yes.

7 Q I'll show you what's been marked as Government's
8 Exhibit --

9 MR. MARTINEZ: I'm sorry, Your Honor, I'm still just
10 getting a blank screen at the lectern. Thank you.

11 Q (BY MR. MARTINEZ) I want to show you what we've marked
12 as Government Exhibit PHCS 15. Do you recognize this photo,
13 Sergeant?

14 A Yes.

15 Q And is this the still image you generated from the
16 footage we just watched?

17 A Yes.

18 Q Tell us what we're looking at here.

19 A It's blown up portion of that video from the liquor store
20 and it's a still image of the individual that committed the
21 shooting grabbing the left side of their clothing.

22 Q And tell us again who you identified this individual to
23 be.

24 A David Hunter.

25 Q And tell me about the shoes he's wearing.

1 A The shoes are black Adidas shell top with three white
2 stripes.

3 Q Thank you. Oh, and while we have the photo on the
4 screen, can you just generally describe the clothing
5 Mr. Hunter is wearing, for the jury?

6 A White T-shirt, black pants, and the black Adidas shell
7 tops with the three white stripes.

8 Q I'm going to switch back to the video function.

9 MR. MARTINEZ: And Ms. Powell, I apologize, I can't
10 get the options to come up on my screen.

11 THE CLERK: You're fine. It takes about a minute to
12 just switch over.

13 MR. MARTINEZ: And Your Honor, may we --

14 Q (BY MR. MARTINEZ) All right. Sergeant, you mentioned
15 earlier that there was a CCTV camera in the area of Mund Park;
16 is that right?

17 A Right.

18 Q You mentioned that you obtained footage that was
19 collected by that camera as part of your investigation?

20 A That's correct.

21 Q Is that what we're starting to look at here?

22 A Yes.

23 Q Could you tell us when -- was this footage taken on the
24 day of the homicide?

25 A It was.

1 Q When, in relation to the homicide, was the footage
2 taken?

3 A About three hours after the crime scene was cleared, so
4 about the 7:00 o'clock p.m.

5 Q Let's do this in relation to the murder. You said the
6 murder was about 1:00 p.m.; is that right?

7 A Yes.

8 Q So this is about 7:00 p.m., which is six hours later; is
9 that correct?

10 A Correct.

11 Q All right. Before we play the footage, did you also --
12 could you tell the jury, did you also participate in gif
13 excerpts like the ones we just watched for the liquor store
14 for this video?

15 A Yes.

16 MR. O'TOOLE: Objection, Your Honor.

17 THE COURT: You wish to approach?

18 MR. O'TOOLE: If you like.

19 THE COURT: Please.

20 (Bench conference on the record.)

21 MR. O'TOOLE: Your Honor, it appears that I object
22 on relevance grounds, out of the box. First of all, it
23 appears that this video is taken six hours after the crime
24 happened, when the crime scene is cleared. I'd ask for a
25 proffer as to how, in what the government sees these videos

1 can be relevant to this crime scene.

2 THE COURT: Well, I think it's a foundational
3 objection, at least that's -- I don't know what this is about.
4 It seems to be more foundation before we start to play this
5 video. We've got the image up in front of the jury.

6 MR. MARTINEZ: Okay. We can certainly do --

7 THE COURT: Sustained.

8 (The following proceedings were had in open court.)

9 Q (BY MR. MARTINEZ) Sergeant, before we play the video,
10 just a few preliminary questions. Did your investigation of
11 the homicide begin immediately on the afternoon of the
12 murder?

13 A Yes.

14 Q And were you notified that afternoon by a CCTV operator
15 that potentially relevant footage had been captured in the
16 area of Mund Park?

17 A Yes.

18 Q Did you make a determination that footage was relevant to
19 your investigation?

20 MR. O'TOOLE: Objection to leading, Your Honor.

21 Q (BY MR. MARTINEZ) Can you tell the jury whether or
22 not --

23 THE COURT: Sustained. Rephrase the question.

24 Q (BY MR. MARTINEZ) Can you tell the jury whether or not
25 that footage ultimately proved relevant to your

1 investigation?

2 A Yes, it did prove relevant to the investigation.

3 Q Why?

4 A The individual positioned in that park was wearing the
5 same white T-shirt, black pants, and those Adidas shell top
6 shoes with the three white stripes.

7 Q Was there anything else about the footage that you deemed
8 relevant?

9 A The individual in the center identified as
10 Gerald Johnson, seated to the right of counsel in the blue
11 sweater, was positioned in the center of that meeting having a
12 discussion and is apparently reenacting a shooting.

13 MR. O'TOOLE: Your Honor, may we approach the bench,
14 please?

15 THE COURT: Yes.

16 (Bench conference on the record.)

17 THE COURT: I think I'll just sustain the objection,
18 strike the last reference to re-enacting anything, and move
19 onto the next question.

20 MR. O'TOOLE: Cutting out the middleman here. Thank
21 you.

22 (The following proceedings were had in open court.)

23 THE COURT: Strike any reference to a reenactment,
24 ladies and gentlemen, next question.

25 Q (BY MR. MARTINEZ) And Sergeant, just to recap, do I

1 understand you to be saying that you believed the footage was
2 relevant because it captured a meeting --

3 MR. O'TOOLE: Your Honor, objection. If we can
4 approach the bench?

5 THE COURT: Sustained. Leading. Next question.

6 MR. MARTINEZ: Let's just go ahead and play the
7 video.

8 MR. O'TOOLE: Objection.

9 THE COURT: Sustained. Lack of foundation.

10 Q (BY MR. MARTINEZ) All right. Sergeant, let's continue
11 explaining why you believed that the footage from the CCTV
12 camera was relevant.

13 A Those individuals were gathered in that park --

14 MR. O'TOOLE: Objection.

15 THE COURT: Overruled.

16 Q (BY MR. MARTINEZ) Sergeant, did the footage capture --

17 THE COURT: Let him answer. "Those individuals were
18 gathered in the park."

19 A In the 2400 block of Greenmount Avenue. That homicide of
20 Henry Mills occurred that day and that individual wearing the
21 same clothing of the person who was the shooter was captured
22 in that meeting, that white T-shirt and black pants and the
23 black Adidas with white stripes, also the same build as the
24 person captured in the liquor store video.

25 Q And Sergeant, you described this as a meeting. What kind

1 of meeting, when you reviewed the footage, did you believe it
2 to be?

3 MR. O'TOOLE: Objection.

4 THE COURT: Overruled. You may answer.

5 A During the course of the investigation, I believed it to
6 be a gang meeting, BGF gang meeting.

7 MR. O'TOOLE: Objection.

8 THE COURT: All right. Sustained. Lack of
9 foundation. The Court's view is there is sufficient
10 foundation to play the video at this point, if that's where
11 counsel wants to next go.

12 MR. MARTINEZ: Well, I do want to go there,
13 Your Honor, but I have two more questions for
14 Sergeant Landsman.

15 Q (BY MR. MARTINEZ) At the time of Mr. Mills's murder,
16 Sergeant, were you also participating in a broader
17 investigation of gang activity in the Greenmount corridor?

18 A Yes.

19 Q And what gang was the focus of that investigation?

20 A The Black Guerilla Family.

21 Q And I'm sorry, I said two questions, this is going to be
22 a third: Through that investigation, did you become familiar
23 with various targets that law enforcement believed were
24 Black Guerilla Family members in the Greenmount
25 neighborhood?

1 A Yes, I did.

2 Q So based on that background, your involvement in that
3 investigation, what type of meeting did you believe had been
4 captured by the CCTV footage from Mund Park?

5 MR. O'TOOLE: Objection. Characterization.

6 THE COURT: Overruled. You may answer.

7 A BGF gang meeting.

8 Q (BY MR. MARTINEZ) Now I'd like play the tape.

9 (Video played.)

10 Q (BY MR. MARTINEZ) Sergeant, could you tell us who we're
11 looking at there?

12 A David Hunter.

13 (Video played.)

14 Q (BY MR. MARTINEZ) So Sergeant, the gentleman you
15 identified as Mr. Hunter is on the left there in the black
16 jeans; is that right?

17 A Yes.

18 Q Now, the clothing that he's wearing here, you touched on
19 this earlier, but is that -- was that significant to your
20 investigation?

21 A Yes, it was.

22 Q Why?

23 A That's the same clothing that the shooter was wearing
24 earlier in the day, that was seen running past that liquor
25 store video following the shooting of Henry Mills in the 2400

1 block of Greenmount Avenue.

2 (Video played.)

3 Q (BY MR. MARTINEZ) All right. Sergeant, the person in
4 the bluish green shirt in the middle there, were you able to
5 identify that person?

6 A Yes.

7 Q Who is that?

8 A Gerald Johnson, seated in the courtroom to the right of
9 defense counsel in the blue sweater.

10 Q Okay. I want to play maybe 30 seconds more of this tape.

11 (Video played.)

12 Q (BY MR. MARTINEZ) Sergeant, you mentioned earlier that
13 you created gif excerpts from this footage; is that right?

14 A Yes.

15 Q And there's one particular gif excerpt that I'd like to
16 show you.

17 (Video played.)

18 Q (BY MR. MARTINEZ) Sergeant, is the loop we're watching
19 now, was that of evidentiary significance to your
20 investigation?

21 A Yes, it was.

22 Q Why?

23 A It looks like Gerald Johnson --

24 MR. O'TOOLE: Objection.

25 THE COURT: Counsel, you can approach.

1 (Bench conference on the record.)

2 THE COURT: Can we stop the gif, please?

3 (Bench conference on the record.)

4 THE COURT: So why should the witness be able to
5 characterize what he thinks he's seeing, why isn't that
6 argumentative? And counsel can certainly talk about it, but
7 the evidence is what it is.

8 MR. MARTINEZ: Your Honor raises a fair point. I
9 wanted to have him explain why he believed it was important as
10 he was doing the investigation, but I understand the Court's
11 concern.

12 THE COURT: Let's leave it where it is.
13 Sustained.

14 MR. MARTINEZ: While we're here, I defer to the
15 Court on this, but this may be a good time to break for
16 lunch.

17 THE COURT: How much longer is he going -- has he
18 got a ways to go?

19 MR. MARTINEZ: 20 minutes.

20 THE COURT: Okay. Yeah, this will work.

21 (The following proceedings were had in open court.)

22 THE COURT: Ladies and gentlemen, we are going to
23 stop and take our lunch break. During the lunch break do not
24 discuss the case with anyone. Do not discuss it even among
25 yourselves. Do not allow yourselves to be exposed to any news

1 articles or reports that touch upon the case or the issues it
2 presents or any articles or reports that relate to any of the
3 participants in the case. Avoid all contact with any of the
4 participants in the trial. Do not make any independent
5 investigation of the law or the facts of the case. Do not
6 look up anything related to the case or its participants on
7 the internet. Do not consult an encyclopedia or dictionary.
8 We'll be out for 1 hour and 10 minutes, resuming at 2:15.
9 Please take the jury out.

10 (Jury left the courtroom.)

11 THE COURT: Sergeant Landsman, you're excused until
12 2:15, you must return then. You may step down. Counsel,
13 let's plan to come back at 2:00 o'clock to address the
14 juvenile issue. 2:00 o'clock.

15 (A recess was taken.)

16 THE COURT: Be seated, please. Let's take up the
17 juvenile matter. If there was no evidence presented during
18 the course of this trial that Mr. McCants had any involvement
19 in unlawful activity under the umbrella of the alleged
20 conspiracy after his 18th birthday, it would strike me that
21 under *Spoone*, the Court may well be confronted with a personal
22 jurisdiction issue in relation to Mr. McCants's presence in
23 this case. But the evidence that I'm aware of, both some of
24 which has been presented, other was foreshadowed by opening
25 statement, other was presented during the course of the

1 motions hearing, would suggest that the government likely will
2 be in the position to demonstrate that Mr. McCants was
3 involved in conspiratorial activity, as set out in the
4 indictment after he turned 18.

5 Mr. Francomano, I'm not asking you whether you agree
6 with that factual matter, what I'm asking you is whether you
7 agree with the legal proposition that if the Court were to
8 find that there was such evidence that the Court would have
9 jurisdiction over your client and the allegations against him
10 in this case.

11 MR. FRANCOMANO: I would agree with that,
12 Your Honor.

13 THE COURT: So I so find. That resolves the first
14 question and subject to some Rule 29 argument that
15 Mr. Francomano makes that, hey, they never presented any
16 evidence that he was involved in the conspiracy after his 18th
17 birthday, otherwise, I'm clear in my own mind on what the law
18 requires.

19 All right. Then in that circumstance, then we're
20 left with a question of, well, what do we make of the evidence
21 relating to the stabbing that allegedly occurred -- I forgot
22 now, was that on Guilford? My north/south streets --

23 MR. FRANCOMANO: 24th Street.

24 MR. MARTINEZ: Greenmount.

25 MR. FRANCOMANO: Greenmount, yeah.

1 THE COURT: All right. Wherever it allegedly
2 occurred, we know the incident we're talking about, when
3 clearly Mr. McCants had not achieved the age of 18. What are
4 we to make of that evidence, is it even admissible? My ruling
5 is that the mere fact of his having been a juvenile at that
6 time is not a basis for excluding that evidence from
7 consideration by this jury, just wholesale across the board,
8 it should not have come in and it needs to be stricken. I
9 don't think that's the answer.

10 The case law would suggest that at a minimum it
11 could come in as evidence that would reflect on such things as
12 knowledge, intent, plan, opportunity, absence of a mistake or
13 accident, the sorts of things that we see as exceptions listed
14 under Rule 404(b). It would be probative of those kinds of
15 questions about Mr. McCants's sort of knowledge and intentions
16 after he had achieved the age of 18. So it strikes me that
17 it's admissible on that basis at least.

18 The last part of it that I think is more of an open
19 question is whether or not that evidence comes in against
20 Mr. McCants as evidence of substantive guilt on the conspiracy
21 charge. Mr. Martinez.

22 MR. MARTINEZ: Your Honor, we think it should --

23 THE COURT: Well, you've cited me one case that is
24 unpublished. And there's a lot of other cases that would sort
25 of suggest maybe not. But go ahead.

1 MR. MARTINEZ: Well, with respect to that case, the
2 Sparks case, I think is useful for the analysis that it
3 engages in of the 4th Circuit's *Spoone* decision. I think
4 *Spoone* over the years has been projected as being something
5 it's not, if you actually look at the opinion. What happened
6 in that case, the defendant participated in a conspiracy both
7 before and after his 18th birthday. If I recall correctly, he
8 had not yet attained the age of 21 at the time of the
9 prosecution, and the simple issue that the *Spoone* court
10 decided is whether in a -- whether conspiracy is a continuing
11 offense such that one who participates in the conspiracy
12 before and after their 18th birthday, thereby is not protected
13 from having the jury consider evidence of things that may have
14 happened before they turned 18.

15 And the portion of the *Spoone* opinion that I think
16 later courts have glommed onto and cited as standing for a
17 proposition, I think goes beyond what the opinion actually
18 says, is they say: "We see no basis in the record to conclude
19 that *Spoone* was convicted solely on the basis of things that
20 happened before his 18th birthday. And in fact, we take great
21 comfort from the fact that the trial court repeatedly
22 instructed the jury that they were not to consider such
23 things."

24 So from that simple statement, later courts,
25 including the *Claiborne* court in the Eastern District of

1 Virginia, the *Thomas* court in the D.C. Circuit, and I think
2 there may be a few other opinions. They've taken that simple
3 language from *Spoone* and turned it into a requirement that
4 such a limiting instruction be given and a rule that
5 premajority conduct is only admissible for the purpose of
6 showing knowledge and intent in the types of 404(b) things the
7 Court was just talking about.

8 I don't think anything in the language of *Spoone*
9 stands for that. I think there are other later case law
10 including the *De La Torre* opinion from the 10th Circuit that
11 we cited, which gave essentially the explanation and reading
12 of *Spoone* I just gave to the Court. I think that's the
13 sounder reading and if you look at Judge --

14 THE COURT: Let's leap past that because I think I
15 generally agree with that proposition, but that doesn't
16 necessarily resolve this in your favor. I don't think I'm
17 required by *Spoone* to give the limiting instruction, but I
18 have a more fundamental question, and that is, isn't there
19 something wrong with trying to hold someone accountable in
20 adult court for misconduct that they committed when they were
21 a child?

22 I mean, I could turn this thing on its head. Let's
23 suppose you've got a case where the conspiracy charge is --
24 begins on the defendant's 13th birthday and it ends on the day
25 after his 18th birthday. On the day after his 18th birthday,

1 he drove Mr. Big to a meeting where they were going to talk
2 about everything that was going on and he knew exactly what
3 was up with the conspiracy and he nonetheless got in the car
4 and drove the boss to that meeting. So just no question at
5 all that he engaged in an overt act himself in furtherance of
6 the conspiracy during the life of the conspiracy.

7 But when he was 14, 15, and 16, he committed murders
8 on his own, also in furtherance of the whole thing. So we're
9 going to say that based on the one day driving of the boss to
10 a meeting, he can be held substantively accountable in adult
11 court in relation to those three homicides committed when he
12 was a juvenile, simply because it can be proven that it was
13 all part of the same conspiratorial scheme. To me that's
14 holding a child responsible as an adult without a lawful basis
15 for doing so.

16 MR. MARTINEZ: Well, with respect to the lawful
17 basis, Your Honor, I mean, I think there's case law from a
18 bunch of different circuits that suggest exactly that type of
19 scenario is appropriate. The 4th Circuit has not gone so far
20 as to hold that definitively. But in the *Foster* opinion from
21 the Lexington Terrace case that we referenced in our letter,
22 Judge Blake did find that one of the members of the
23 Lexington Terrace Boys gang who had participated in two
24 murders while he was 17, could be -- well, the government
25 could introduce evidence of those murders as part of its case

1 in chief without regard to Rule 404(b) in that case.

2 And so she, I think, may have parted company with
3 the Court's perspective in terms of deciding, well, simply
4 because these murders happened when the defendant, whose name
5 was Taylor, was a juvenile, that doesn't mean that they can't
6 come in against him at trial. So we do think that there's
7 case law that stands for the proposition of pre-18 conduct
8 should come in as evidence of guilt.

9 I would also point out here, even though I believe
10 the charges were nolle prossed, Mr. McCants was charged as an
11 adult in the Circuit Court for Baltimore City with assault.

12 THE COURT: Yeah, that's of no moment because
13 there's also a procedure whereby you can attempt to hold him
14 accountable for his juvenile conduct in federal court too, but
15 you've got to jump through a bunch of hoops.

16 MR. MARTINEZ: That was going to be my next point,
17 Your Honor. In the hypothetical the Court just posited, a
18 defendant who participates in a conspiracy almost exclusively
19 before 18, then turns 18 and does something on day one, and
20 thereby renders it a continuing offense, that's a far cry --
21 that hypothetical is a far cry from what we have here.

22 THE COURT: Sure it is, but it's still a good test
23 of the principle because the principle needs to hold up in
24 that circumstance just as well as it does on your more
25 attractive fact pattern for it to be legally sound.

1 MR. MARTINEZ: I agree with that generally,
2 Your Honor, except I think from a legal point of view, we're
3 on different footing when we're dealing with a defendant who's
4 21 or older after the case is indicted, because between 18 and
5 21, at least at the time of the indictment, a defendant is --
6 does have the protection of the Federal Juvenile Delinquency
7 Act under *Spoone*. I think what the 4th Circuit said in *Sparks*
8 is that if the defendant's 21 years or older when the case is
9 indicted, then he's no longer a juvenile within the meaning of
10 the act. And those authorities, *Spoone* and the Federal
11 Juvenile Delinquency Act --

12 THE COURT: It's all true. I look more at *Spoone*
13 about jurisdiction, and I'm totally satisfied the government,
14 provided they prove up the facts they say they're going to
15 prove up, absolutely has jurisdiction over -- that this Court
16 has jurisdiction over Mr. McCants. And I think that's sort of
17 the end of that issue. But it's in holding -- in holding that
18 jurisdiction over him, what do I lawfully hold him accountable
19 for?

20 It just seems odd to me that conduct that -- I mean,
21 you would agree that if you came in here and charged Mr.
22 McCants with a single act of murder from when he was 15 or 16
23 years old, that if you hadn't invoked the special procedures
24 that are set out in 5035 or whatever it is, of the Juvenile --
25 what is it, the Federal Juvenile Delinquency Act, I forget

1 what it's called. If you hadn't done that, then you couldn't
2 hold him accountable. You would say yes, because there wasn't
3 jurisdiction.

4 MR. MARTINEZ: Yes.

5 THE COURT: But my question goes beyond that, is
6 that even when we're in the circumstance where we've got
7 jurisdiction, is he still accountable as an adult for illegal
8 conduct that he committed as a child?

9 MR. MARTINEZ: Under conspiracy principles, I think
10 he is, under the reasoning that conspiracy is a continuing
11 offense. And there's case law in the 4th Circuit in the
12 sentencing context --

13 THE COURT: But we don't hold even adults
14 accountable for misconduct that occurred under the umbrella of
15 a conspiracy that wasn't known to them and wasn't foreseeable
16 to them.

17 MR. MARTINEZ: Correct.

18 THE COURT: So why isn't standard law about the lack
19 of capacity of juveniles the answer to this? In other words,
20 we don't treat his thinking about this and his intentions,
21 whatever they were when he was 15 or 16, as intent or
22 foreseeing in the way that we do with an adult.

23 MR. MARTINEZ: I think the answer to the Court's
24 question, or at least the best and most satisfying answer I
25 can give at this point, is that the Court to have gone so far

1 as to hold premajority conduct as substantive evidence of
2 guilt, rely on the concept of ratification. And they say that
3 if you ratify your participation in the conspiracy by
4 continuing to participate after you were 18, then that brings
5 in everything that happened before. There are lots of
6 authorities, including *De La Torre*, that go in that
7 direction.

8 THE COURT: It just seems like -- I mean, there's a
9 lot of fiction involved in conspiracy law. We would all agree
10 to that, especially in racketeering conspiracy law, but these
11 are subtle questions and I'm not trying to undo all of that.
12 But wow, it really gets to an extreme point when we start
13 trying to say that you can effectively reach back from your
14 state of majority, and by continuing to be involved in a
15 particular group, make yourself legally culpable for choices
16 and decisions and actions that you took when you were 15 or 16
17 years old.

18 I mean, the whole premise of not extending
19 adult-type response -- responsibility or culpability to that
20 sort of misconduct is that they are children. They have
21 unformed brains, they are not fully responsible for their
22 conduct. And yet, through this principle, we're trying to say
23 that, well, because you were doing similar things when you
24 were 22, 23, 24, you didn't stop doing it, somehow that
25 renders what you did when you were 15 and 16 to be decisions

1 made with capacity. But --

2 MR. MARTINEZ: Your Honor, I do think that is what
3 this concept of ratification does. I think that's how it
4 operates, in principle. I think when we're talking about
5 overt acts in racketeering conspiracy, it's important to note
6 that we're not always necessarily -- in this particular case
7 we're talking about an assault and a stabbing. But we're not
8 always talking about acts that happen to be in themselves
9 criminal. One can do all kinds of overt acts in furtherance
10 of a conspiracy that aren't criminal.

11 And to posit another hypothetical, if we're talking
12 about somebody who when they're 17 made a phone call, posted
13 something on social media while they were a juvenile, under
14 the Court's analysis of diminished capacity, is the Court
15 saying that we couldn't then, through the concept of
16 ratification, reach back and bring that into the post-18
17 conduct if they continue to participate?

18 THE COURT: It's a fair point. I think the other
19 point that you could make in rebuttal to my argument is that
20 this is different from if there was a freestanding count that
21 you had -- that the grand jury had returned.

22 MR. MARTINEZ: That's correct.

23 THE COURT: Which was somehow, you know, there was
24 jurisdiction. I don't know quite what it would be, but also,
25 when he was 15 on such and such a date, he stabbed a guy.

1 MR. MARTINEZ: Right.

2 THE COURT: And we haven't gone -- and you haven't
3 got any of the Juvenile Delinquency Act prerequisites
4 satisfied.

5 MR. MARTINEZ: Your Honor, while we're discussing
6 this, one thing I do want to say that I think we agree is
7 appropriate, after having thought about this, what emerges
8 from this whole analysis is that the idea of ratification is
9 important. And we are perfectly comfortable going forward
10 with the limiting instruction -- or a jury instruction rather,
11 at the end of the case, that instructs the jury that in order
12 to find Mr. McCants guilty of the conspiracy count, they have
13 to find that he did something to ratify his participation in
14 the conspiracy after age 18. I think that would be an
15 appropriate instruction in a case like this where you have
16 conduct --

17 THE COURT: Yes, but what is -- I'm with you on
18 that, but what would that mean? Does he have to simply --
19 there has to be proof that he was involved in the conspiracy
20 after age 18, or does there have to be proof beyond that,
21 which was not only was he involved after 18, but he somehow,
22 through his actions, his words, conduct, whatever,
23 acknowledges involvement before he was 18 and said, "As an
24 adult, I adopt that, I ratify that."

25 MR. MARTINEZ: Well, I'm not sure there's a

1 difference in practice between the two things the Court just
2 hypothesized, because the evidence of ratification is going to
3 be something he said or did. I do agree with the Court that
4 in the ordinary course you're -- once you're in a conspiracy,
5 you're presumed to be in until you affirmatively withdraw. I
6 think in the context of a conspiracy that straddles the age of
7 18, that principle does not apply and there does need to be
8 some showing of ratification after 18.

9 THE COURT: Was he in the conspiracy the day before
10 his 18th birthday?

11 MR. MARTINEZ: Mr. McCants?

12 THE COURT: Yeah.

13 MR. MARTINEZ: Indeed.

14 THE COURT: That's sort of the question, isn't it?
15 Because functionally, I understand your position completely.
16 I'm asking you legally. Let's suppose that he'd engaged in
17 all the activity that you're describing prior to his 18th
18 birthday. And it just so happens that he didn't turn 18 until
19 November 1st of this year and you returned the second
20 Superseding Indictment in October of 20 -- or September,
21 whatever it is, of 2017. Would he be liable? I mean, you
22 couldn't charge him, he's a juvenile.

23 MR. MARTINEZ: That would be correct, then we'd have
24 a jurisdictional issue.

25 THE COURT: Everything he did, but you're saying

1 that's just back to the jurisdictional question.

2 MR. MARTINEZ: Well, even putting aside the
3 jurisdictional issue, we wouldn't have been able to charge
4 him, as a practical matter, nor would we have as a matter of
5 prudence.

6 THE COURT: All right. We're not going to resolve
7 it this afternoon, but that's the last thing that I am hung up
8 on. I have no question that the evidence is admissible. It's
9 to what extent and in support of what theories, and we'll
10 continue to review this. We'll have to get it resolved by the
11 time, obviously, of our instructions conference after the
12 holidays.

13 Mr. Francomano, do you want to be heard further
14 before we let it rest for today?

15 MR. FRANCOMANO: Your Honor, just briefly. You did
16 touch on what our argument is under 18, U.S.C., 5032. And in
17 the Juvenile Delinquency -- the Federal Juvenile Delinquency
18 Act, there are a number of hoops that the government does have
19 to jump through before they can bring a case into adult court.
20 I could go through the entire list, but I don't want to waste
21 anybody's time. But that's our argument, Your Honor. Prior
22 to his 18th birthday, all of those issues would have had to
23 have gone through that, I guess, transformation to bring it up
24 into adult court. Thank you, Your Honor.

25 THE COURT: The case law doesn't seem to support

1 that, with many judges having the opportunity to sort of look
2 at this issue and it's not where they go. They get very
3 fixated on the question of jurisdiction. And pretty much
4 every court that's looked at it has satisfied itself that if
5 the conspiracy spans the two phases of a defendant's life,
6 juvenile and adult, and it's the same conspiracy, that that's
7 enough to bring into the courtroom the evidence of the crimes
8 and overt acts and actions in furtherance of the conspiracy
9 committed by that defendant when that defendant was a
10 juvenile.

11 Whether or not there has to be a limiting
12 instruction saying, well, you're only to consider this on
13 these 404(b) exception type bases or whether it comes in
14 straight up, is our hanging question that we still have to
15 resolve. And I don't find the case law completely satisfying
16 in that regard.

17 All right. Mr. O'Toole.

18 MR. O'TOOLE: It occurs to us that because our
19 client is also being held responsible for conduct, apparently,
20 that was committed by either this defendant or another one of
21 the co-conspirators, Mr. Handy, who was also about the same
22 age as Mr. McCants. So there's conduct being conducted by
23 juveniles that our client, as an adult, is going to be held
24 responsible for. I think we have to join the objection and
25 see how it plays out with -- down the road.

1 THE COURT: Well, you can note it for the record and
2 you as well, Mr. Bussard.

3 MR. BUSSARD: And I have one additional --

4 THE COURT: Yes.

5 MR. BUSSARD: Your Honor, Mr. Jones's birthday is
6 XX/XX/1987. Therefore, in the indictment there are two overt
7 acts that are listed that would have -- it just says sometime
8 in 2005, so anything that predates May 6th, 1985 -- or '05,
9 would have been before his 18th birthday, so for that reason,
10 we join.

11 THE COURT: All right. Well, but it's also
12 incumbent upon you to reiterate that issue with respect to any
13 proof that specifically comes in of misconduct occurring prior
14 to May -- what is it?

15 MR. BUSSARD: May 6th, 2005.

16 THE COURT: May 6th of 2005. You better object when
17 that particular evidence is presented or I will conclude that
18 you waived it. I'm not going to give you an overarching
19 objection to any such evidence. I don't know if there is any,
20 and you need to bring it to the Court's attention if and when
21 it's offered.

22 MR. BUSSARD: I have not heard it as of yet.

23 THE COURT: All right. Are we ready for the jury?

24 MR. MARTINEZ: Yes, Your Honor.

25 THE COURT: Bring them.

1 (Jury entered the courtroom.)

2 THE COURT: Good afternoon, ladies and gentlemen.
3 We are now ready to resume. Having addressed and resolved
4 some questions outside of your hearing, we are ready to go
5 once again. Sergeant Landsman, you remain under oath, you may
6 be seated. Mr. Martinez, you may continue with your
7 examination.

8 MR. MARTINEZ: Thank you.

9 Q (BY MR. MARTINEZ) Sergeant, before the break we were
10 watching the CCTV footage from the area of Mund Park. Do you
11 remember that?

12 A Yes.

13 Q I may have asked you this earlier, but did you also
14 participate -- in addition to the gif image that we just saw,
15 did you participate in generating still photos or screenshots
16 from the Mund Park CCTV footage?

17 A Yes, I did.

18 Q All right. I want to show you a couple of exhibits.
19 This is Government's Exhibit PHCS 14-3, Sergeant, if you could
20 tell us what we're looking at here.

21 A It's a still photograph from that CCTV camera footage
22 from Mund Park on June 14th, 2011. The still photo is
23 highlighting David Hunter standing in the park.

24 Q And could you tell us what kind of shoes he's wearing?

25 A Black Adidas shell tops with the three white stripes.

1 Q Sergeant, now I'm going to show you
2 Government's Exhibit PHCS 14-2. Could you tell me what this
3 picture shows?

4 A It's another still photograph of that CCTV video from
5 Mund Park on that date of June 14th, 2011, which is
6 highlighting David hunter.

7 Q And the gentleman in the blue shirt there, did you
8 indicate to us before the break who you believed that to be?

9 A Gerald Johnson, seated in the courtroom in the blue
10 sweater.

11 Q I just want to show you Government's Exhibit PHI 45.
12 Who's that, Sergeant?

13 A It's David Hunter.

14 Q Sergeant, I want to fast-forward about ten days and
15 direct your attention to June 24th of 2011. Did there come a
16 time where David Hunter was brought to your office at homicide
17 for an interview?

18 A Yes.

19 Q Was Mr. Hunter photographed when he was brought to
20 homicide?

21 A Yes, he was.

22 Q I'm going to show you a couple exhibits, I'll start with
23 Government's Exhibit PHCS 10-2. I'll start with the photo on
24 the top. I know his head is cut off, but what are we looking
25 at here?

1 A The photograph taken in the homicide office of
2 David Hunter on that date wearing the black Adidas tennis
3 shoes with the three white stripes.

4 Q Okay. The bottom photo here, is this the same person,
5 only we can see his face?

6 A Yes, it is.

7 Q Show you Government's Exhibit PHCS 10-1, what are we
8 looking at in these photographs?

9 A A photograph of the shoes on David Hunter's feet, the
10 black Adidas with the three white stripes, then it's a
11 photograph of the shoes being removed.

12 Q Sergeant, while Mr. Hunter was in the homicide office,
13 did you obtain a search and seizure warrant for his shoes?

14 A Yes, I did.

15 Q Why did you do that?

16 A Recover the shoes that were captured in that video that
17 the shooter that killed Henry Mills was wearing on that date
18 of June 14th, 2011.

19 Q Sergeant, I want to approach and show you
20 Government's Exhibit 52. Open the bag and I'll ask you
21 whether you recognize those items.

22 A Yes, I do.

23 Q What do you have there?

24 A The two black Adidas tennis shoes with the three white
25 stripes seized from David Hunter.

1 Q Sergeant, when Mr. Hunter was photographed at the
2 homicide office, were photographs taken of his tattoos?

3 A Yes, there were.

4 Q I'm going to show you Government's Exhibit PHT 1-1 and
5 I'll focus you on this image here of the right hand. Tell us
6 what we see on his palm -- or sorry, on the outside of his
7 hand there.

8 A David Hunter's right hand, it's the letters B, G, F.

9 Q Let me show you what's marked as
10 Government's Exhibit PHT 1-4. I'll start with the top photo,
11 what does it say above Mr. Hunter's left -- left chest
12 there?

13 A RIP Lil' Don 276.

14 Q Sergeant, before the break do you remember telling us
15 that in addition to the Henry Mills homicide investigation,
16 you've also been involved in a broader investigation -- with a
17 broader investigation of BGF activity in the Greenmount Avenue
18 area?

19 A Yes.

20 Q And through that investigation, you've become familiar
21 with various targets or suspected BGF members in the
22 neighborhood?

23 A Yes.

24 Q Was there a target of your investigation who went by the
25 nickname of Lil' Don?

1 A Yes, there was.

2 Q What was that target's real name?

3 A Donatello Fenner.

4 Q Is Mr. Fenner still with us?

5 A No, he's dead.

6 Q Do you know when he died?

7 A 2010 he was shot and killed.

8 Q Do you know how he died -- I'm sorry, you just answered
9 that.

10 Give me a moment, Sergeant, I'm just trying to get back
11 to the document camera. I want to show you the bottom half of
12 Government's PHT 1-4 and I'll ask you to tell us what you see
13 there.

14 A Photograph of the back of David Hunter with the numbers
15 276 in flames tattooed on it.

16 Q Now I'd like to show you Government's Exhibit PHT 1-5,
17 this is the top half of it. What are we looking at in this
18 photograph, Sergeant?

19 A It's a photograph of David Hunter's left hand with the
20 tattoos 24th and Barclay and 22nd Street.

21 Q Let me see if I can zoom in on the 4 here. Can you tell
22 us where you see the Barclay?

23 A The Barclay is tattooed inside the 4.

24 Q Thank you. Sergeant, I want to move forward about
25 another month and direct your attention to July 23rd of 2011.

1 On that date did law enforcement arrest a suspect in
2 connection with the murder of Henry Mills?

3 A Yes.

4 Q Who was that?

5 A David Hunter was arrested.

6 Q Did you take a statement from Mr. Hunter on the date of
7 his arrest?

8 A Yes.

9 Q Did he tell you where he was at the time of the murder?

10 A Yes, he did.

11 Q Where did he say?

12 A He was at 2824 North Calvert Street at his mother's
13 house.

14 Q Did you ask him whether he was with Geezy on the night of
15 the murder at the park?

16 A He said he was not.

17 Q Sergeant, did you also execute search warrants as part of
18 your investigation?

19 A Yes, I did.

20 Q I want to direct your attention to August 8th of 2011.

21 On that date, did law enforcement execute a search warrant at
22 a residence located at 300 East 22nd Street?

23 A Yes.

24 Q Who lived at that address?

25 A Dawnyell Gary.

1 Q Who was she?

2 A It was a girl that David Hunter had a child with.

3 Q Did you seize any evidence from Ms. Gary's residence?

4 A Yes.

5 Q I want to show you a copy of Government's Exhibit GP 10.

6 Do you recognize this document, Sergeant?

7 A Yes, I do.

8 Q What is it?

9 A It's a portion of the BGF 30 rules, 33s.

10 Q And was this one of the items that you seized from
11 Ms. Gary's residence?

12 A Yes, it is.

13 Q Zooming in a little bit here, do you see any references
14 to Jamaa in this shot?

15 A Yes.

16 Q Can you point a couple of them out for us?

17 A It's not working.

18 Q That's all right, you can just read the ones you see.

19 A We do not bring harm to those who depend on Jamaa. We do
20 not bring harm to those members of Jamaa without -- I can't
21 read that. We never steal from Jamaa. We never lie to Jamaa.
22 The truth is revealed in discipline.

23 Q You can stop there. During your time investigating the
24 Black Guerilla Family, Sergeant, have you become familiar with
25 the phrase Jamaa?

1 A Yes.

2 Q Do you know what language it is?

3 A Swahili.

4 Q Do you know what it means in Swahili?

5 A Family.

6 Q I'm going to show you Government's Exhibit GP 11. I'll
7 ask you what we're looking at here.

8 THE COURT: One second, Mr. Martinez.

9 (Pause in the proceedings.)

10 THE COURT: Ladies and gentlemen, we do have now one
11 of our IT engineers present in the courtroom. And she is
12 going to be moving around the courtroom a little bit testing
13 out our technology and when we get a problem like this, where
14 it suddenly won't highlight again, you may see her walking up
15 to the witness stand or back to the podium or wherever, just
16 pretend she's not here.

17 MR. MARTINEZ: May I continue?

18 THE COURT: You may proceed.

19 Q (BY MR. MARTINEZ) Sergeant, could you tell us what
20 Government's Exhibit GP 11 is?

21 A The rules of Jamaa.

22 Q I want to focus you here on the section that says Jamaa
23 visions. Do you see above my pen here where it says Eusi
24 Gayedi Jamaa?

25 A Yes.

1 Q Do you know what language that is?

2 A Swahili.

3 Q Do you know what it means in Swahili?

4 A Black Guerilla Family.

5 Q I'm going to show you Government's Exhibit GP 12. Do you
6 recognize this item?

7 A Yes, I do.

8 Q What is it?

9 A It's several -- a photograph and pieces of paperwork that
10 were seized from the search warrant at 300 East 22nd Street.

11 Q And just for the record, the exhibit we just looked at,
12 GP 11, was that also seized at 300 East 22nd Street?

13 A Yes.

14 Q I'm going to take these piece by piece here. I want to
15 focus you on this particular section of the exhibit, Sergeant.
16 What are we looking at here?

17 A Piece of paper that had different phone numbers and
18 street names next to the numbers.

19 Q On the basis of your participation in the broader
20 investigation of BGF activity in Greenmount, are you familiar
21 with any of these street names?

22 A Yes.

23 Q Are you familiar with the street name Geezy?

24 A Yes, I am.

25 Q Does that name correspond to a target of your

1 BGF Greenmount investigation?

2 A Yes, it does.

3 Q Which target?

4 A Gerald Johnson.

5 Q The same Gerald Johnson you pointed out earlier?

6 A Yes.

7 Q How about the street name K Slay, does that correspond to
8 a target of your broader investigation?

9 A Yes, it does.

10 Q Who?

11 A Kenneth Jones, seated in the courtroom with the pink
12 collared neck shirt.

13 Q How about on the right, the street name Roscoe, does that
14 correspond to a target of your investigation?

15 A Yes, it does.

16 Q Who is that?

17 A Kenneth Faison.

18 Q I'll show you Government's Exhibit PHI 27. Can you tell
19 us who that person is?

20 A Kenneth Faison.

21 Q And do you know what, if any, relationship there is
22 between Mr. Faison and Mr. Jones?

23 A It's Gerald Johnson's brother.

24 Q Now, back to the exhibit here, I want to focus you on the
25 loose-leaf note at the top, or a copy of it. Did your broader

1 investigation of BGF activity in Greenmount focus on a target
2 named Taz at any point?

3 A Yes, it did.

4 Q Can you tell us whom you believe Taz to be?

5 A Artez Harris.

6 Q And GP 12, just could you remind us where that was
7 recovered?

8 A In 300 East 22nd Street, in the third floor front room.

9 Q That was the residence belonging to Dawnyell Gary;
10 correct?

11 A Yes.

12 Q Sergeant, I now want to direct your attention to
13 September 27th of 2011. Did law enforcement execute another
14 search warrant on that date?

15 A Yes.

16 Q Do you know which address?

17 A 318 East 22nd Street.

18 Q And could you tell us who lived there?

19 A Artesia Simmons.

20 Q Who was she?

21 A Artesia Simmons was a girl that David -- that was
22 visiting David Hunter while he was in jail and receiving mail
23 from David Hunter.

24 Q Did you seize any evidence from that address?

25 A Yes, I did.

1 Q Let me show you a few more exhibits. This is
2 Government's SM 1, do you recognize this photograph,
3 Sergeant?

4 A Yes, I do.

5 Q All right. I'm going to zoom in as much as I can here.
6 Now, if your technology is working, can you use the touch
7 screen and identify anybody you might recognize in this
8 picture?

9 A Yes, I can.

10 Q Can you, though? Sergeant, we can --

11 THE COURT: All right. We're going to have to limp
12 along until the next break. Let's do the best we can without
13 the ability to actually use the pointer.

14 Q (BY MR. MARTINEZ) All right. Sergeant, I will use my
15 pen. Who's this gentleman here?

16 A Joseph Bonds.

17 Q And was he a target of your investigation of the
18 BGF Greenmount Regime?

19 A Yes, he was.

20 Q How about this gentleman here?

21 A Yes.

22 Q Who was it?

23 A Wesley Brown.

24 Q Was he also a target of your broader investigation?

25 A Yes, he was.

1 Q How about this gentleman here in the --

2 A Gerald Johnson.

3 Q And you've identified him previously as being seated
4 right over here; correct?

5 A Yes.

6 Q How about that guy here?

7 A David Hunter.

8 Q And lastly, this gentleman right there?

9 A Ronnie Hall.

10 Q I'm going to show you Government's Exhibit SM 2. Do you
11 recognize this photograph?

12 A Yes, I do.

13 Q What are we looking at now?

14 A It's a photograph of David Hunter and Joseph Bonds making
15 an X sign.

16 Q What, if anything, can you tell us about their
17 T-shirts?

18 A The T-shirts say George Lester Jackson.

19 Q Sergeant, based on your investigation of the BGF, are you
20 familiar with George Lester Jackson?

21 A Yes.

22 Q Do you know who he was?

23 A The founder of the Black Guerilla Family.

24 Q Sergeant, in addition to executing search warrants, did
25 you also interview witnesses in connection with your

1 investigation?

2 A Yes.

3 Q Did you interview eyewitnesses?

4 A Yes, I did.

5 Q Did you interview one or more than one?

6 A More than one.

7 Q I want to now direct your attention to October 20th of
8 2011. On that date did you take a statement from
9 Mr. Johnson?

10 A Yes, I did.

11 Q During the interview did you ask Mr. Johnson about where
12 he was when Henry Mills was murdered?

13 A Yes, I did.

14 Q What did he say?

15 A He indicated that he was with Lakeya Brady at the time of
16 the murder and came up later.

17 Q Did you ask Mr. Johnson whether he was at the park with
18 David Hunter later that night?

19 A Yes, I did.

20 Q What did he say?

21 A He indicated that he came up to the park with Dave.

22 Q Did Mr. Johnson say how long he had known Dave?

23 A For years.

24 Q Did you ask Mr. Johnson whether he knew the victim,
25 Henry Mills?

1 A Yes.

2 Q What did he say?

3 A He indicated that he did know him.

4 Q Did he say how he knew him?

5 A He knew him as a Muslim and he had -- he indicated he was
6 a cold dude.

7 Q Did you ask Mr. Johnson any questions about the 2007
8 murder of Naim King?

9 A Yes.

10 Q What did he say?

11 A He indicated he heard Naim King was killed when he was in
12 jail and that he heard Nique had killed him.

13 Q Did you ask Mr. Johnson whether he was a member of YGF?

14 A Yes.

15 Q And first let me ask whether you know what YGF is.

16 A Yes, I do.

17 Q What is it?

18 A The Young Guerilla Family.

19 Q Now, in response to your question to Mr. Johnson as to
20 whether he was a member of YGF, what did he tell you?

21 A That he was.

22 Q Did you ask Mr. Johnson if he was a member of BGF?

23 A Yes.

24 Q Did he admit or deny being a member of BGF?

25 A He denied being a member of BGF.

1 Q Sergeant, as part of your broader investigation into the
2 BGF Greenmount Regime, did you review an Instagram photo that
3 was posted on the account with the user name dattniccageeznutz
4 in April 2016?

5 A Yes.

6 Q I want to approach and show you -- actually, it's already
7 in evidence, Government's CD 3. I'd like to play you a clip,
8 very short clip of CD 3. Now, I just want to make sure we get
9 to the right. Sorry, we need to fix the sound.

10 (Video played.)

11 Q (BY MR. MARTINEZ) All right. Towards the end of that
12 video did you hear Mr. Johnson say "free Roscoe"?

13 A Yes, I did.

14 Q You mentioned earlier one of the targets of your broader
15 BGF investigation was someone named Roscoe; right?

16 A Yes.

17 Q You said you believed that person to be Kenneth Faison?

18 A Correct.

19 Q At the very end did you hear Mr. Johnson say "free Dave,
20 N-word, my shooter"?

21 A Yes.

22 Q Did any of the targets of your investigation of the
23 BGF Greenmount Regime go by the nickname Dave?

24 A David Hunter did.

25 Q Were there any other targets of your investigation who

1 went by the name Dave?

2 A No.

3 Q So far as you're aware; is that right?

4 A Correct.

5 MR. MARTINEZ: Those are all the questions we have
6 for Sergeant Landsman.

7 THE COURT: Thank you. Cross-examination,
8 Mr. O'Toole.

9 MR. O'TOOLE: Thank you.

10 CROSS-EXAMINATION

11 BY MR. O'TOOLE:

12 Q Sergeant, good afternoon, sir.

13 A Good afternoon.

14 Q We went through parts of a video that were filmed on the
15 day that Mr. Mills was killed; correct?

16 A Correct.

17 Q That video was filmed -- the part that you showed us was
18 filmed some several hours -- six hours after the killing;
19 right?

20 A Yes.

21 Q And the park had been cleaned up and cleared -- the park
22 and the murder was cleared up and roped off by yellow tape;
23 right?

24 A Correct.

25 Q So the video was not filmed right at the scene;

1 correct?

2 A That's correct.

3 Q And it was nearby, you said?

4 A Yes.

5 Q How far, half a block, a block?

6 A Well, it's actually at the start of the 2400 block of
7 Greenmount Avenue.

8 Q So that's how much?

9 A The same block, but about -- the murder's in the area of
10 2458 Greenmount Avenue, so half a block away or more.

11 Q All right. Half a block or more. But the part of the
12 crime scene itself was not available to anybody because it was
13 still being cordoned off -- it was fenced off or taped off?

14 A From 1:00 o'clock to about 4:00 o'clock, yes.

15 Q And then after that it was opened up?

16 A Yes, sir.

17 Q All right. So at the time the video was filmed, that
18 part of the neighborhood was open to anybody who wanted to
19 walk through it?

20 A Correct.

21 Q Including the people you saw in the video that we saw
22 earlier this morning?

23 A Yes, sir.

24 Q All right. The part that you showed us started at what,
25 about 6:00-something, 7:00-something, what time is it?

1 A It was after 7:00 p.m.

2 Q And that wasn't a private setting, was it? That was in a
3 public part of the neighborhood; correct?

4 A Yes, sir.

5 Q Anybody could have come and gone, walked in, walked out
6 during that time period; right?

7 A Yes.

8 Q It wasn't -- there wasn't any kind of a fencing or a --
9 or barricade that allowed these people that you showed us in
10 the video to have a private meeting?

11 A Yes --

12 Q It wasn't a private meeting in a sense that it was in a
13 closed area, was it?

14 A No, it was not.

15 Q Now, you didn't have any sound to that video. Did your
16 camera capability come with audio?

17 A No, it did not.

18 Q So it was turned -- it wasn't turned down, it just didn't
19 exist; is that right?

20 A That's correct.

21 MR. O'TOOLE: Your Honor, I'm going to ask the
22 government if they would play for us the beginning of that --
23 I'm going to ask for some help here.

24 MR. MARTINEZ: Asking the wrong person.

25 Q (BY MR. O'TOOLE) Sergeant, we're going to ask my

1 assistant here to play this video from the first part of
2 the -- when the camera is in your vantage point -- started
3 videoing.

4 When you showed us the video -- let me ask you this while
5 Mr. Martinez is trying to help me: When you showed us that
6 video today, was that the first part of any video that you had
7 that day from that camera?

8 A No.

9 Q No. So we're going to play this and this is where we saw
10 it played from the beginning this morning; right?

11 A Yes, sir.

12 Q And as it's playing --

13 How do we get this going, Mr. Martinez -- oh, here we go.

14 As we're going, if you don't mind, I'm not going to stop
15 it. I'm going to ask you questions. I think you can answer
16 the questions while we're playing it, if that's okay with you.

17 A Yes, sir.

18 Q I asked you before if people could come and go in the --
19 what you called a meeting or a gathering. Can you see from
20 the way people are standing that there's active possible
21 access from people who were coming and going?

22 A Yes.

23 Q I see somebody leaving right now.

24 A Yes.

25 Q Do you know if that person was in the gathering or he is

1 just walking by?

2 A At that time he was just -- he was leaving.

3 Q All right. Now, there's a road to the left or a path to
4 the left. What is that, is that a sidewalk or a road?

5 A It looks like part -- the sidewalk is outside of that
6 black steel fence, but then it -- they're inside the park and
7 it's summertime, so the grass is worn down, so it's a dirt
8 area around that park bench.

9 Q So we see some trees on the left and see some shadows,
10 are those shadows public area?

11 A Yes.

12 Q Now here comes a person in a pink shirt. That person
13 didn't seem to have interest and just walked by; is that
14 right?

15 A Correct.

16 Q Now we see vehicles in the front, between the people that
17 we're looking at and where the camera is. Are those vehicles
18 on the road there, the street?

19 A They're on Greenmount Avenue.

20 Q All right. And you called that a busy street before?

21 A Yes, it is.

22 Q All right. And that's four lanes, two lanes in each
23 direction?

24 A Yes.

25 Q All right. And I think later we see some buses; is that

1 right?

2 A Yes.

3 Q Now here there's a person walking around the outside. Is
4 he stopping -- he seems to have come by and he's shaking
5 somebody's hand.

6 A Yes, he is.

7 Q Is that Mr. Hunter, he shook his hand?

8 A Yes.

9 Q And that person is now leaving; is that right?

10 A No.

11 Q He's staying in the area?

12 A He is.

13 Q I don't have the screen here, so I'm looking over
14 Mr. Martinez's shoulder. As you see people in the background,
15 like that person who just walked by in the striped shirt, he
16 did not join the meeting; is that right, or the gathering?

17 A It looks like he's remaining there to the right side.

18 Q All right. Now I see somebody on a bicycle. Is that a
19 juvenile on a bicycle, can you tell?

20 A Once I get a better view, maybe.

21 Q So the person on the bicycle just rode right up to the
22 middle of this gathering that you just told us about. Now
23 there's two bicycles. Now the cameras seem to follow them for
24 a second and then left, so somebody is handling this camera;
25 is that right?

1 A Correct.

2 Q So they can pan it in, they can pan it out, and they can
3 follow the people in terms of watching; right?

4 A Yes, sir.

5 Q Now, you can't tell from what you're watching what
6 anybody's saying, can you? You can't make out any words from
7 where you're sitting, can you?

8 A No.

9 Q Do you see anybody -- let me ask you, do you see anybody
10 with black bandanas on them?

11 A Not at this time.

12 Q You told Mr. Martinez that somebody was making the
13 crossed arms or crossing the sign as some sort of message. Do
14 you see anybody in this video, as you watch it, and if you do,
15 let me know who are crossing their arms in front of somebody
16 else. If you see that, please tell me.

17 A I don't see it at this time.

18 Q Well, if you do -- if you do, let me know.

19 A Yes, sir.

20 Q You don't know everybody who's in this video, do you?

21 A No, I don't.

22 Q You told Mr. Martinez the people whose names you knew,
23 you were able to identify from watching; right?

24 A Yes, sir.

25 Q So the other people who you did not mention, you don't

1 know who they are?

2 A Right, correct.

3 Q There's somebody walking by, did he join? No, he didn't.
4 Now, there's somebody in the back, several people, were they
5 in this meeting, gathering, or are they just walking by, can
6 you tell?

7 A The two that just walked away from it and then there's a
8 female who was not in it. And then the other guy just walking
9 the sidewalk, he was not in it.

10 Q Can you tell us why the person who's operating the
11 camera -- here comes a person on a scooter, do you know who
12 this person is? Does he appear to be saying hello to
13 people?

14 A He does.

15 Q He does. Person operating the camera seems to be panning
16 it in and panning it out, what is the purpose of that?

17 A I think that -- just trying to focus the camera and see
18 if anything else is occurring or the camera may go back to a
19 tour after a certain amount of seconds, so I don't know why.

20 Q A woman just walked by in a tank type shirt, she didn't
21 appear to be joining the group, did she?

22 A No.

23 Q Some people are standing up and some people are sitting
24 down; right?

25 A Yes, sir.

1 Q And the person on the scooter just started his scooter
2 and now he's leaving; right?

3 A Yes.

4 Q Here comes some more people. You said before this is
5 really not a private area. Now these people seem to be
6 joining the others we talked about. Now there's more people;
7 is that correct?

8 A Yes. The one in white, black, and red stripes is
9 Ronnie Hall.

10 Q Okay. With the short-sleeved shirt?

11 A Yes.

12 Q How about the fellow in the black and white and red
13 shirt?

14 A Ronnie Hall.

15 Q Oh, in that shirt. Who's the person in the short-sleeved
16 shirt right there on the left?

17 A David Hunter with the black pants and the white short
18 sleeve.

19 Q No, that's the one you're talking about. The one behind
20 him in the --

21 A In the tank top?

22 Q Right.

23 A I don't know.

24 Q Does this appear to you there's a conversation going on
25 to the left some place and Mr. Johnson is sort of standing off

1 to the right, where we're looking at it right now?

2 A It looks like they're --

3 Q In different conversations; right?

4 A I wouldn't say that. It kind of looks like they're in
5 the same -- they're kind of circled around facing that inner
6 circle. And it looks like David Hunter is talking now and
7 they're focused on him, the way he's moving his hands.

8 Q This is the full six hours after the alleged -- the crime
9 that took place earlier in the day; right?

10 A Yes, sir.

11 Q Got some children running up to the -- getting a ball, is
12 that what it looked like? Just going to look at this until
13 the end. I'm not sure how long it goes, but we're going to
14 watch just a few minutes more until the end of it. Now it
15 looks like there's, how many people left; one, two, three,
16 maybe seven, is that about your count?

17 A Seven, eight, nine, ten.

18 Q Now what do you think is happening?

19 A The police were responding to the block.

20 Q I'm sorry?

21 A The police responded to the block based on the CCTV
22 camera operator.

23 Q So the police asked them to walk away?

24 A No, just the -- they pulled up in the block and the crowd
25 broke up and started to walk away. The last one who remains

1 is David Hunter.

2 Q I'm sorry, you said a bunch of police pulled up in the
3 block?

4 A Yes.

5 Q Okay. Shut that off. Is that -- that's the end of your
6 filming -- so during the course of that film, we didn't ever
7 see anybody with any crossed arms or black bandanas or those
8 two things you talked about before, have they -- or did we?

9 A No, sir.

10 MR. O'TOOLE: Your Honor, I have no more
11 questions.

12 THE COURT: Thank you. Mr. Bussard.

13 MR. BUSSARD: Thank you, Your Honor. May we
14 approach briefly before I start?

15 THE COURT: Yes.

16 (Bench conference on the record.)

17 MR. BUSSARD: Your Honor, I just wanted
18 clarification. Detective -- or Sergeant Landsman received
19 other information about possible other suspects other than
20 Mr. Hunter. It came from James Cornish and that was the
21 subject of the appeal where the Court of Special Appeals in
22 Maryland, there was a question about whether he had lied under
23 oath. I don't care about that. I just care about whether
24 they received other information about other possible suspects.
25 That's all I wanted to --

1 THE COURT: Okay. So you're giving us advanced
2 notice that you're not attempting to go into the area that we
3 already discussed during the pretrial motions about the
4 admissibility of anything that the Court of Special Appeals
5 might or might not have concluded about Sergeant Landsman's
6 testimony. Instead, you simply want to explore with him
7 whether or not the investigation uncovered evidence of
8 involvement in the homicide by persons other than
9 David Hunter.

10 MR. BUSSARD: That's correct.

11 THE COURT: Okay. And your basis for pursuing that
12 line of questioning is the fact that during the state
13 proceedings in relation to the same matter, it was what,
14 elicited that they had run down some other such leads or been
15 aware of them --

16 MR. BUSSARD: That's all it really is, is that when
17 they get into an investigation, there is information coming in
18 from different sources until they eventually focus on one
19 particular person or none at all. I'm not getting --

20 THE COURT: Standard cross-examination to me. Any
21 questions from the government?

22 MR. MARTINEZ: No. I mean, there's no issue with
23 him eliciting that, you know, there were -- there was
24 information that may have identified other suspects. Where it
25 gets complicated, Your Honor, is eliciting the substance of

1 that information and trying to get other people's accounts in
2 through the sergeant on cross-examination. I'm not sure --

3 THE COURT: That's hearsay. That would be hearsay.
4 The fact that there was potentially other leads or whatever,
5 but getting into what their exact statements were, you
6 couldn't do that. But given the notion that there was other
7 information out there that figured into the investigation,
8 sounds to me like very standard material.

9 MR. BUSSARD: And the source of that, that
10 alternative information.

11 THE COURT: Source of it as well.

12 MR. BUSSARD: Yes, but I'm not going to get into the
13 substance --

14 THE COURT: Who said what. Right. I understand.
15 You may proceed.

16 (The following proceedings were had in open court.)

17 CROSS-EXAMINATION

18 BY MR. BUSSARD:

19 Q Good afternoon, Sergeant Landsman.

20 A Good afternoon.

21 Q You indicated in response to government's questions that
22 you received a call and responded to the 2400 block, I think
23 of Greenmount Avenue, for this crime scene?

24 A Yes, sir.

25 Q And when you arrived there, patrol was already on the

1 scene?

2 A They were.

3 Q And was the crime scene techs already on the scene as
4 well?

5 A They were not.

6 Q Was the yellow tape already up?

7 A Yes, it was.

8 Q Okay. And the purpose of the yellow tape is really to
9 make sure people don't go walking through a potential crime
10 scene; is that correct?

11 A Yes, sir.

12 Q Was the street blocked off as well by -- so that there
13 wouldn't be any traffic on Greenmount Avenue during this crime
14 scene investigation?

15 A There were certain areas that were blocked off.

16 Q And I'm showing you Government's Exhibit PHCS 9-2, which
17 you looked at before. Are you able to see that, Sergeant?

18 A Yes.

19 Q And is this the crime scene at Greenmount Avenue?

20 A Yes, sir.

21 Q And these little yellow markers, do you see those?

22 A Yes, sir.

23 Q And then the larger marker down at the lower picture, do
24 you see that?

25 A Yes.

1 Q Okay. And do you place those markers or does somebody
2 else place those markers?

3 A Crime lab technician places the markers.

4 Q So when you arrive and the crime scene tech arrives, you
5 do a walk around through the crime scene?

6 A Yes, and direct a crime lab tech on what to recover.

7 Q Okay. And you're not sure at that point whether what you
8 pick up has any relevance at all to the case; is that
9 correct?

10 A Well --

11 Q You hope it does, I guess.

12 A Yeah, and you're basing -- you're investigating the crime
13 scene and looking -- so it's a shooting, so you're looking at
14 items that would be related to the shooting and in that
15 proximity of where the murder occurred, so --

16 Q Would you also pick up if there happened to be a bottle
17 or something else that might yield fingerprints or DNA, would
18 you pick up something like that at this crime scene?

19 A Well, it depends on the crime scene, but at this crime
20 scene I did pick up certain evidence, a bottle and -- the
21 water bottle and the --

22 Q Okay. And they're processed by the crime scene tech
23 then?

24 A Yes, sir.

25 Q And also, in the top photograph over here near the tree,

1 I see some yellow tape, is that the kind of yellow tape that
2 would be used?

3 A Yes, sir.

4 Q To block off a crime scene?

5 A Yes.

6 Q And is that standard procedure to put that type of tape
7 up?

8 A Yes, it is.

9 Q Now, I just want to ask you a question. You just looked
10 at a video a few moments ago that was shown. Was Mr. Jones in
11 that video?

12 A He was not.

13 Q And it came to your attention around Halloween of 2007
14 that a person by the name of Naim King had been murdered?

15 A Yes, sir.

16 Q Okay. And through the course of your investigation into
17 this incident that you've been talking about, the murder of
18 Henry Mills, that occurred in June 14th, 2011; is that
19 correct?

20 A Yes, sir.

21 Q And did you come to understand that this may have been a
22 retaliatory action for the murder of Naim King?

23 A Yes, I did.

24 Q Now, based on your investigation, also, you had occasion
25 in June to arrest Mr. Hunter; is that correct? Did I get the

1 date correct?

2 A Yeah, there was two dates, you're right. He came into
3 police custody for the search warrant in June and he was
4 arrested the following month.

5 Q So in July?

6 A Yes, sir.

7 Q So eventually Mr. Hunter was arrested for the murder of
8 Mr. Mills that we saw earlier today?

9 A Yes, sir.

10 Q And through -- your investigation doesn't always stop
11 with the arrest of somebody; is that correct, is that a fair
12 assessment?

13 A Correct.

14 Q Did there come a time where you received information that
15 someone else may have been involved in this murder?

16 A Yes.

17 Q And was that information that two other people may have
18 been responsible for that murder?

19 MR. MARTINEZ: Objection.

20 THE COURT: Overruled.

21 MR. MARTINEZ: May we approach?

22 THE COURT: Yes.

23 (Bench conference on the record.)

24 THE COURT: Isn't this what we were talking about?

25 MR. MARTINEZ: I think it is and I think that the

1 substance of the information is where the line is crossed.
2 He's not in a position to know the answer to the question
3 Mr. Bussard just asked, but for the conversations he's had
4 with other people about the substance of the information
5 others came forward with. So I objected because I think this
6 is the moment where he crossed the line.

7 THE COURT: Overruled. Doesn't mean we're not close
8 to it.

9 (The following proceedings were had in open court.)

10 THE COURT: Overruled. You may continue.

11 Q (BY MR. BUSSARD) Sergeant Landsman, you did receive
12 information that two other people were involved in this
13 murder; is that correct?

14 A Yes.

15 Q And the substance of that was received from an
16 individual?

17 A I was forwarded the information from other investigators
18 that they had interviewed a person that had information that
19 someone else was involved in this murder.

20 Q Do you know who that information came from?

21 MR. MARTINEZ: Objection.

22 THE COURT: Overruled. Do you know who the
23 information came from?

24 A Yes, sir.

25 MR. BUSSARD: I have no other questions, Your Honor.

1 I will ask --

2 Q (BY MR. BUSSARD) Sergeant Landsman, who was that
3 person?

4 A James Cornish.

5 Q And do you know James Cornish to be -- to go by a street
6 name?

7 A Nod.

8 Q Nod?

9 A N-o-d.

10 Q Were any other arrests made in this case?

11 A Yes, there were.

12 Q As a result -- in the Henry Mills murder?

13 A As a part of the broader investigation, but specific to
14 just for the murder of Henry Mills, there was the one person
15 identified by three witnesses and that was David Hunter.

16 Q So Mr. Cornish provided information different than what
17 you had received before?

18 A Mr. Cornish had received information and he -- that he
19 provided about someone else may -- being involved and that
20 information did not develop as that person had any specific
21 involvement. But developments did come out that David Hunter
22 was trying to get someone else to take the charge for the
23 murder of Henry Mills through communication in jail.

24 MR. BUSSARD: I have no other questions. Thank you.

25 THE COURT: Mr. Francomano.

1 MR. FRANCOMANO: No questions, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MARTINEZ:

5 Q Sergeant, I want to show you -- if we could go back to
6 the park video, I just want to show you 20 seconds of it. But
7 before we do, we got into all the information that Mr. Cornish
8 provided. At the end of the day, did you find that
9 information to be credible?

10 A The way that Mr. Cornish received the information, I
11 believed the information that he was providing was credible.

12 Q Was Mr. Cornish an eyewitness in the Mills case?

13 A He was not.

14 Q And the information he was providing, was it in the
15 nature of something he had personal knowledge about?

16 MR. BUSSARD: Objection.

17 THE COURT: Hold on, I heard an objection.

18 MR. O'TOOLE: Leading, but it could lead somewhere
19 else.

20 THE COURT: Overruled. You may continue.

21 Q (BY MR. MARTINEZ) The information Mr. Cornish was
22 providing, was it in the nature of personal knowledge or was
23 it more in the nature of a rumor he had heard on the street?

24 A It was a rumor he had heard.

25 Q And did you investigate that rumor?

1 A Yes, sir.

2 Q Did it pan out?

3 A No.

4 Q Okay. Now I want to go back to the park video, if we
5 could. Let me play about 25 seconds, Sergeant.

6 (Video played.)

7 Q (BY MR. MARTINEZ) Sergeant, during cross-examination
8 Mr. O'Toole asked you with respect to a later clip, whether
9 there was one conversation or multiple conversations happening
10 at that particular point in time later on in the tape. Do you
11 remember that?

12 A Yes, sir.

13 Q As if to say there are multiple things that could be the
14 center of attention at that point in time, is that fair to
15 say?

16 A Correct.

17 Q What's the center of attention at this point in time?

18 A Gerald Johnson.

19 MR. MARTINEZ: Court's indulgence. Those are all
20 the questions we have, Your Honor.

21 THE COURT: Thank you. May the witness be excused
22 on the defense side?

23 MR. FRANCOMANO: Yes, Your Honor.

24 MR. O'TOOLE: Yes.

25 THE COURT: Thank you. Sergeant Landsman, you are

1 excused. You may depart.

2 THE WITNESS: Thank you.

3 THE COURT: Ladies and gentlemen, we'll take the
4 afternoon recess. During the recess do not discuss the case
5 with anyone. Do not discuss it among yourselves. You must
6 wait until after you've heard all the evidence, the closing
7 arguments, and my instructions as to the law. Do not allow
8 yourselves to be exposed to any news articles or reports that
9 touch upon this case or the issues it presents or any articles
10 or reports that relate to any of the participants in the case.
11 Avoid all contact with any of the participants in the trial.
12 Do not make any independent investigation of the law or the
13 facts of the case. Do not look up anything related to the
14 case or its participants on the internet. Do not consult an
15 encyclopedia or a dictionary. 15 minutes. Please take the
16 jury out.

17 (Jury left the courtroom.)

18 THE COURT: Who's next?

19 MR. MARTINEZ: Next is Corporal Finch from the
20 Elkton Police Department. He's not going to be a long witness
21 and he's the last of the four we have scheduled for today. I
22 can tell the Court we're ahead of schedule and our next three
23 witnesses are all incarcerated prisoners who are being
24 transported tomorrow.

25 THE COURT: So you're going to want to leave early

1 today. Okay. Bear in mind that tomorrow, I think we already
2 mentioned this, but presumably we'll go until 1:00, 1:15,
3 1:20, or whenever, but when we do take that lunch break, I
4 will be detained in other court-related business from
5 beginning at 2:00 p.m. I think until 3:00 p.m. So program
6 that into the scheduling. Otherwise, a regular court day. 15
7 minutes.

8 (A recess was taken.)

9 THE COURT: Are we ready for the jury?

10 MR. MARTINEZ: Yes.

11 THE COURT: You can bring in the witness?

12 (Jury entered the courtroom.)

13 THE COURT: Be seated, please. Mr. Martinez, you
14 may call your next witness.

15 MR. MARTINEZ: Your Honor, the government's next
16 witness is Corporal Todd Finch of the
17 Elkton Police Department.

18 THE COURT: Thank you. Madame Clerk.

19 THE CLERK: Corporal, raise your right hand to be
20 placed under oath.

21 CORPORAL TODD FINCH

22 called as a witness, being first duly sworn, was examined and
23 testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Thank you, sir. You may have a seat.

1 If you would please speak directly into the microphone. State
2 your first and last name and spell your first and last name.

3 THE WITNESS: My name's Corporal Todd Finch of the
4 Elkton Police Department --

5 THE COURT: Hold on, we're having problems. Fixed
6 that one pretty quickly. Say that again, sir.

7 THE WITNESS: Yes, sir. Corporal Todd Finch from
8 the Elkton Police Department. First name is spelled T-o-d-d;
9 last name, F-i-n-c-h.

10 THE COURT: Your witness.

11 DIRECT EXAMINATION

12 BY MR. MARTINEZ:

13 Q Corporal, good afternoon.

14 A Good afternoon.

15 Q I'm going to ask you to make sure you keep the microphone
16 close to you and speak up so the ladies and gentlemen of the
17 jury can hear you. Can you please tell us which law
18 enforcement agency you work for?

19 A I'm employed with the Elkton Police Department,
20 Elkton, Maryland.

21 Q How long have you been with the Elkton PD?

22 A Ten years now.

23 Q And could you walk us through the various positions
24 you've held up until you became a corporal?

25 A Yes. From being on patrol in June 2008, I've been a

1 field training officer for at least seven years and a
2 supervisor holding the rank of corporal for three.

3 Q So Corporal, what was your assignment as of
4 August 2010?

5 A I was patrol officer in August of 2010.

6 Q And I want to direct your attention specifically to the
7 early morning hours of August 26th, 2010. Were you working
8 and on duty at the time?

9 A Yes, sir.

10 Q Did there come a time early that morning when you were
11 asked to report to the scene of a home invasion robbery --

12 MR. FRANCOMANO: Objection.

13 THE COURT: You may approach.

14 (Bench conference on the record.)

15 THE COURT: The characterization?

16 MR. FRANCOMANO: Exactly, Your Honor. Foundation --
17 there's nothing about it --

18 THE COURT: An incident. Sustained.

19 (The following proceedings were had in open court.)

20 THE COURT: Sustained. Rephrase the question.

21 Q (BY MR. MARTINEZ) Corporal, did there come a time early
22 on the morning of August 6th, 2010, when you were asked to
23 respond to an incident?

24 A Yes, sir.

25 Q What type of incident were you asked to respond to?

1 MR. FRANCOMANO: Objection.

2 THE COURT: Overruled, you may answer.

3 A On that date at that time, I responded to a home invasion
4 in progress.

5 Q Can you recall the scene of --

6 THE COURT: Subject to being connected up. Go
7 ahead.

8 Q (BY MR. MARTINEZ) Can you recall the scene where you
9 went to respond to that call?

10 A How, recall the scene how? I'm sorry.

11 Q I'm sorry, it was a bad question. Where did you go -- to
12 what scene did you go after you got the call?

13 A I responded to 126 Pheasant Drive, Elkton, Maryland.

14 Q I want to show you Government's Exhibit GM 33. Do you
15 recognize this location, Corporal?

16 A Yes, sir. That's 126 Pheasant Drive in Elkton,
17 Maryland.

18 Q Was anybody else with you when you responded to the
19 residence?

20 A There was another officer with an allied agency, yes,
21 sir.

22 Q What agency was that?

23 A Cecil County Sheriff's Department.

24 Q When you got to the residence, Corporal, where did you
25 go?

1 A I went to the front door of the residence.

2 Q How about your -- first of all, your colleague what, was
3 his name?

4 A Deputy Muller.

5 Q And were you able to see where Deputy Muller went as you
6 were going to the front of the residence?

7 A As I was going to the front, he was going around the rear
8 of the residence.

9 Q So when you got to the front door, Corporal, can you tell
10 us whether it was locked?

11 A It was not locked, it was slightly ajar. It was
12 unsecured.

13 Q Okay. And what did you do when you reached the threshold
14 of the front door?

15 A I looked in, I noticed there was no lights on, I couldn't
16 see anything. With the type of call we received, I decided to
17 just go ahead and make sure the area was safe and I opened the
18 door slightly and I still couldn't see anything, nor could I
19 hear anything at that time.

20 Q All right. Did you eventually go inside?

21 A I did.

22 Q What happened when you went inside?

23 A As I entered the residence, I stated that I was there,
24 yelling "Elkton Police." And as soon as that happened, things
25 became pretty chaotic.

1 Q What do you mean by that, what happened after you yelled
2 out "police"?

3 A After I yelled out my presence being there, I heard
4 several loud noises, loud crashing coming from the second
5 floor, people started yelling. And I also heard people
6 yelling "shut up" to other people.

7 Q Were you still downstairs at that point?

8 A I was.

9 Q Did there come a point when anyone ran down the stairs?

10 A Yes. Shortly after all that -- all that happened, all
11 the noise, several people come running down the steps towards
12 me.

13 Q Tell us what you saw as people were running down the
14 stairs.

15 A First, a white female and a black male came rushing down
16 the steps towards me. I quickly identified them as being the
17 residents at the address. And you know, they're shouting to
18 me, "they're upstairs, they're upstairs, they have a gun" --

19 MR. FRANCOMANO: Objection, Your Honor.

20 MR. MARTINEZ: Excited utterance.

21 MR. FRANCOMANO: Foundation, then.

22 THE COURT: Overruled. Counsel may approach.

23 (Bench conference on the record.)

24 THE COURT: Proffer. What's coming?

25 MR. MARTINEZ: Well, proffer what's coming? I

1 thought you said Crawford and my mind was racing for a
2 second.

3 THE COURT: Proffer.

4 MR. MARTINEZ: He's going to testify that then two
5 gentleman came running down the stairs, the couple who lived
6 there shouted "that's them, that's them" as they ran
7 downstairs, and then he and his partner chased the two people
8 who were upstairs in the house. And his partner followed one
9 suspect, he followed another, and eventually they find
10 Mr. McCants hiding in some bushes a few blocks or so from the
11 residence. He arrests him, interviews him, and Mr. McCants
12 says "I was the only person involved" and he asks Mr. McCants
13 where he knows -- whether he had any connection to anybody in
14 the residence. And McCants says, "Yes, I knew one of the
15 girls who lived there, I met her in Baltimore, we went to the
16 movies." He's going to say they never arrested the second
17 suspect.

18 THE COURT: Okay. So I'll hear you, Mr. Francomano,
19 but back in the dark ages we used to call this res gestae
20 evidence. That's a criticized term now, but it introduces the
21 loose concept of what we're talking about here, an excited
22 utterance, statements made in the heat of the moment of what's
23 transpiring. Impression of a then occurring event, a number
24 of exceptions come in the Court's mind --

25 MR. FRANCOMANO: At this time I withdraw,

1 Your Honor.

2 MR. O'TOOLE: Res gestae is no longer good?

3 THE COURT: That's a lot of trouble, you go there.

4 (The following proceedings were had in open court.)

5 THE COURT: You may inquire, Mr. Martinez.

6 Q (BY MR. MARTINEZ) Corporal, I think the last question
7 was -- well, you were describing the first two people you saw
8 come running down the steps and you said you identified them
9 as residents of the home.

10 A Yes, sir.

11 Q I believe before the objection you were explaining to the
12 ladies and gentlemen of the jury what those two people said as
13 they were coming down the stairs, do you remember that?

14 A Yes.

15 Q I just want to give you an opportunity to complete your
16 answer to that question.

17 A Certainly. As they were, you know, shouting at me what
18 was going on, they had told me that they were trying to get
19 out of the window. So I looked up towards the window of the
20 residence and I didn't see anything. I didn't see anybody
21 trying to get out. And at about the same time as I was kind
22 of focused towards the front of the house, I saw one of the
23 people running down the steps. They continued down the steps
24 out towards where I was and in front of the residence.

25 Q Okay. And were you able to identify who those two people

1 were?

2 A Not immediately, no, sir.

3 Q As they were coming down the steps, did the couple who
4 came down initially, did they blurt anything out as the other
5 two followed?

6 A As they came down the steps and were --

7 THE COURT: Which they?

8 THE WITNESS: I'm sorry?

9 THE COURT: Which they?

10 THE WITNESS: As the next two individuals came down
11 the steps, not the residents who initially came down, as the
12 next two individuals came down the steps, they were crossing
13 the threshold coming outside. That's when the residents, the
14 first two people that came down the steps, identified them as
15 being the subjects, the suspects.

16 Q (BY MR. MARTINEZ) Okay. I'm going to show you
17 Government's Exhibit GM 34. Sorry about the glare. All
18 right. Corporal, can you tell us what we're looking at
19 here?

20 A Yes, sir. That is an overview or aerial view of
21 Pheasant Drive, Mallard Court, Huntsman and Quail Court.

22 Q And I'd like you to start by indicating for us with your
23 finger on the touch screen, if you would, where
24 126 Pheasant Drive is.

25 A 126 Pheasant Drive should be located -- I'm sorry.

1 (Indicating.)

2 THE COURT: You can clear the screen by hitting the
3 lower left -- or lower right, I guess.

4 THE WITNESS: Lower right?

5 THE COURT: Try the lower left. There you go.

6 THE WITNESS: It's going to be right there.

7 Q (BY MR. MARTINEZ) All right. So let's pick up the story
8 when the second two individuals who came down the stairs
9 exited the house. Were you able to see where they went after
10 they left the house?

11 A Yes. The two individuals split up immediately after
12 exiting the front of the residence and went in two separate
13 directions.

14 Q And can you show us on Exhibit GM 34 here where the two
15 individuals went?

16 A That's correct, after entering the front of the
17 residence, one individual went this way and the other went
18 that way.

19 Q And were those two individuals pursued?

20 A Yes, they were.

21 Q Did you pursue one of them?

22 A I did.

23 Q Which way did you go?

24 A I came down here, following the suspect I was behind.

25 And the other deputy came down here, following the second

1 suspect.

2 Q As you were chasing the suspect down -- if this is
3 Quail Court here, were you able to get a better look -- or
4 were you able to get a look at what he was wearing, do you
5 remember anything distinctive about his clothing?

6 A I believe the only thing I could recall at that time was
7 a dark top, dark shirt with pants on.

8 Q And how about the suspect who went the other way before
9 you chased after the guy down Quail Court, did you get a look
10 at the other guy as he was heading towards Mallard Court?

11 A That's right. The other suspect who fled in the other
12 direction, the one thing that stood out to me pretty
13 distinctively, he was wearing large yellow latex gloves.

14 Q All right. So Corporal, can you tell us what happened --
15 do I understand you correctly that you chased your suspect all
16 the way down Quail Court?

17 A Yes, sir.

18 Q Did you chase him to the end of the cul-de-sac?

19 A That's correct.

20 Q What happened when you reached the end of the
21 cul-de-sac?

22 A As I reached the end of the cul-de-sac, the two suspects
23 kind of end up meeting right here in this open field between
24 Gooseneck Court, which is this street here, and Quail.
25 There's this large field here where they kind of all met up

1 and I met up with the other deputy as well as, as we're
2 chasing after the two individuals.

3 Q What happened after that?

4 A After that the suspects fled into the brush right in this
5 area here. And myself and the other officers were able to
6 establish a perimeter of the area.

7 Q Did there come a time you called for a K-9 unit?

8 A I did, sir.

9 Q Why did you do that?

10 A In case we had to continue tracking the suspects through
11 the woods.

12 Q Tell us what, if anything, happened while you were
13 waiting for the K-9 unit to arrive.

14 A As I was waiting for a K-9 unit to arrive to the area,
15 there was some rustling going on in the brush line right in
16 front of myself and the other deputy that was with me. And we
17 were able to see one subject inside the brush. We gave
18 commands and he came crawling out of the brush to us.

19 Q And were you able to tell whether he was the person you
20 were chasing down Quail Court?

21 A Yes, sir, he was the person I chased down.

22 Q And what happened when the person came out of the brush,
23 did you take him into custody?

24 A Yes, he was taken into custody.

25 Q Placed in handcuffs?

1 A Yes, sir.

2 Q Do you see the person you took into custody and placed
3 into handcuffs in the courtroom today?

4 A Yes, I do.

5 Q Could you point him out and identify an article of
6 clothing?

7 A That would be the subject next to defense counsel all the
8 way in the back of the room, wearing all black and glasses.

9 Q Were you able to identify that suspect?

10 A Yes.

11 Q What was his name?

12 A Marquise McCants.

13 Q What about the second suspect, Corporal, the guy who you
14 said was wearing the latex gloves, was law enforcement able to
15 apprehend that individual?

16 A No. That individual did eventually get away. We weren't
17 able to locate him by search of the area or with a K-9.

18 Q So after you looked unsuccessfully for the second
19 suspect, did there come a time where you went back to
20 126 Pheasant Drive?

21 A Yes.

22 Q And when you went back to the residence, were you able to
23 determine whether anything had been taken from the occupants
24 of the home?

25 A Yes. We learned that there was a wallet that was stolen,

1 as well as some cash, U.S. currency.

2 Q Did you search the residence for evidence?

3 A Yes, I did.

4 Q Can you tell us what, if anything, you found in the
5 house?

6 A A small .38 caliber revolver was located in the bedroom,
7 second floor bedroom.

8 Q And when you recovered that gun, did you run the serial
9 number through an ATF database?

10 A Yes, sir, I did.

11 Q What did that database reveal?

12 A It later revealed the handgun was stolen through Georgia,
13 I believe it was.

14 Q Can you tell us what ultimately happened to that
15 firearm?

16 A The firearm was returned back to its owner, I believe a
17 few years after the incident had taken place.

18 Q In addition to the firearm, Corporal, did you recover any
19 significant items from the home?

20 A There was a set of latex gloves recovered from the
21 residence as well, matching the gloves that the suspect -- the
22 other suspect was wearing that got away.

23 Q So after you searched the home, Corporal, later that
24 evening, did you go back to the Elkton Police Department and
25 take a statement from Mr. McCants?

1 A I did.

2 Q Did you read Mr. McCants his Miranda rights prior to
3 taking the statement?

4 A I did, yes, sir.

5 Q What, if anything, did Mr. McCants tell you about whether
6 he had been involved in the robbery that you responded to?

7 A Mr. McCants didn't advise a whole lot. But he did state
8 to me that there was no one else involved and that he was the
9 only one that was there.

10 Q Did you ask Mr. McCants whether he had any connection to
11 the people who lived at 126 Pheasant Drive?

12 A Yes, I did.

13 Q What did he tell you in response?

14 A He told me that he was, I believe, in a relationship or
15 he was seeing -- I believe were his words, he was seeing one
16 of the girls who lived at the residence.

17 Q Did he tell you where he met that --

18 A He told me he met the -- one of the females from the
19 residence in Baltimore.

20 Q Did you ask Mr. McCants how he had gotten to
21 Pheasant Drive in Elkton, Maryland on the night of his
22 arrest?

23 A I did ask him, I don't remember his response.

24 Q Would anything refresh your recollection?

25 A If I had my report documenting his statement to me.

1 MR. MARTINEZ: Court's indulgence.

2 THE COURT: Yes.

3 Q (BY MR. MARTINEZ) Read it to yourself and once you've
4 had a chance, look up, and we'll know you're done.

5 A If I remember, I believe your question was how he had
6 gotten --

7 THE COURT: First of all, have you had the
8 opportunity to refresh your memory?

9 THE WITNESS: Yes, sir.

10 THE COURT: Hand the report back to Mr. Martinez.

11 MR. MARTINEZ: Thank you, Corporal.

12 Q (BY MR. MARTINEZ) So having reviewed your report, is
13 your recollection refreshed?

14 A Yes, sir.

15 Q All right. Now, I'll ask you the same question, and
16 again, did you ask Mr. McCants how he had gotten to
17 Pheasant Drive in Elkton, Maryland on the night of his
18 arrest?

19 A Yes.

20 Q What did he tell you?

21 A He told me that they were watching a movie at their
22 residence. I didn't recall seeing anything, him telling me
23 how he got there.

24 MR. MARTINEZ: Court's indulgence. No further
25 questions, Your Honor.

1 THE COURT: Thank you. Mr. Enzinna, Mr. Bussard.

2 MR. BUSSARD: No questions.

3 THE COURT: Mr. Francomano.

4 MR. FRANCOMANO: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. FRANCOMANO:

7 Q Corporal Finch, you approached the house with
8 Deputy Muller; correct?

9 A Yes, sir.

10 Q And you went in the house and you said "come out,"
11 something like that, to that effect; correct?

12 A Yes, sir.

13 Q And then you saw a white female and an African American
14 male come down the stairs?

15 A Yes, sir.

16 Q Correct? And then you saw two African American males
17 come after them; correct?

18 A Yes.

19 Q And you testified today that you immediately knew that
20 the white woman and the African American man were victims; is
21 that correct?

22 A Not immediately, like as soon as they came down the
23 steps. But once they started talking to me, I recognized who
24 they were from prior dealings with those subjects. But yes, I
25 did recognize them to be the residents of the house.

1 Q So your testimony is that you -- is different than what
2 you just said. You're saying that you didn't immediately
3 recognize them as victims, later you did; is that more
4 correct?

5 A It depends on the time frame that you're talking about.
6 Immediately, I guess in my mind, would mean that as I saw them
7 coming down the steps, I immediately recognized them. It
8 wasn't until they were outside standing with me that I
9 recognized who they were.

10 Q So when they were standing outside with you?

11 A Yes, sir.

12 Q Okay. So when they first came down you had no idea?

13 A Not as they were coming down the steps, no, I did not.

14 Q And you said when these two African American males passed
15 you, you couldn't identify them; correct?

16 A Not as they passed me, no, sir.

17 Q You didn't see either of them carrying a gun; correct?

18 A Did not see any of them carrying a gun, no, sir.

19 Q The only thing you remember is that one of them did have
20 yellow gloves on?

21 A Yes.

22 Q And you also stated that one of them was wearing dark
23 pants and a dark shirt; correct?

24 A Dark shirt and pants, I don't remember specifically what
25 kind of shirt or what kind of pants, just general color.

1 Q I'm sorry. Did you testify earlier that it was dark
2 pants and a dark shirt or did you just say dark shirt?

3 A I said dark -- dark top, dark shirt and pants.

4 Q Now, you said you chased an individual -- you chased one
5 of the individuals; correct?

6 A Yes, sir.

7 Q And you chased him down, was it Quail?

8 A Yes, it was Quail Court, I believe I chased him down.

9 Q Okay. But at some point you lost sight of him?

10 A When they entered the wood line, yes, I lost sight of
11 him.

12 Q And that's when you set up a perimeter?

13 A Yes.

14 Q What do you mean by setting up a perimeter?

15 A To be as specific as I can, when we kind of establish a
16 perimeter, we try to surround the area as best as possible.
17 Mind you, just beyond the wood line there's a small river that
18 flows through kind of cutting us off from the other side of
19 what would be Oldfield Point Road, which is kind of on the
20 back end of Gooseneck Court. So by setting up a perimeter,
21 myself and Deputy Muller would have stayed at the wood line
22 where they entered to keep sight of that. And there was other
23 officers who were down the road on the other side of the river
24 on Oldfield Point, where, if somebody would have swam through
25 the river, that would be the closest point they would have,

1 you know, come into contact with. And then we also had
2 another officer on Gooseneck Court as well.

3 Q All right. So it's taking some time to set all this
4 up?

5 A Well, by the time we had gotten to the wood line, other
6 officers were kind of already arriving on scene. So it was
7 almost as we were chasing them into the wood line that there
8 was officers arriving on scene. So it was probably within a
9 few seconds of us chasing them into the wood line we were able
10 to establish that.

11 Q All right. Now, I'm confused. You set up a perimeter,
12 why would you set up a perimeter if a few seconds later you
13 found him?

14 A As we were -- as we had set up the perimeter, we called
15 for a K-9 officer, and as we were waiting for that K-9 officer
16 to respond, that's when we heard and saw the rustling in the
17 wood line and called the person out to us.

18 Q Okay. And when the person came out, you said, you know,
19 come out, and the person came out was cooperative; correct?

20 A Yes, sir.

21 Q And when that person came out, they didn't have any
22 gloves with them; correct?

23 A No.

24 Q They didn't have any guns with them; correct?

25 A No, sir.

1 Q You said after Mr. McCants -- he came out of the bushes,
2 you took him back to the station; correct?

3 A Yeah. We did take him back to the station eventually,
4 yes, sir.

5 Q Okay. In your report -- well, strike that.

6 You said today that you saw the person who was running,
7 was the same person that you found under the bushes; is that
8 correct?

9 A I don't believe I stated that in my report.

10 Q But you stated that today; right?

11 A Yes, sir.

12 Q But it's not in your report, is it?

13 A No.

14 Q In your report you wrote this: "Immediately after the
15 incident happened"; correct?

16 A Which part of my report?

17 MR. MARTINEZ: Objection.

18 Q (BY MR. FRANCOMANO) The re --

19 MR. MARTINEZ: Objection to the contents of the
20 report coming into evidence.

21 THE COURT: Is that what you're attempting --

22 MR. FRANCOMANO: Not at all, Your Honor.

23 THE COURT: Okay. Well, that was what was implied
24 by your question.

25 MR. FRANCOMANO: I'll rephrase, Your Honor.

1 THE COURT: Thank you.

2 Q (BY MR. FRANCOMANO) The report that you wrote, would it
3 help to refresh your recollection if I showed you that
4 report?

5 A Yes, sir.

6 Q Showing you the statement of probable cause.

7 A Okay.

8 Q Just take a look at it.

9 A Okay.

10 Q The question is, do you remember right when you wrote
11 that report? Don't read anything about it, just when you
12 wrote it.

13 A Don't read anything about it?

14 Q Just let me know when you wrote that report.

15 MR. MARTINEZ: Your Honor, can I just object to the
16 whole process that's unfolding here?

17 THE COURT: If you want to refresh his recollection
18 with a document, you're entitled to do that. You've placed
19 that document in front of him.

20 MR. FRANCOMANO: Yes, I have.

21 THE COURT: Officer, you can look at the report,
22 once you've had the opportunity to review the report and
23 you're finished, look up.

24 THE WITNESS: Okay. Okay.

25 THE COURT: Hand the report back.

1 Q (BY MR. FRANCOMANO) Does the report refresh your
2 recollection?

3 A Yes, I believe so.

4 THE COURT: So now you can restate the question,
5 Mr. Francomano.

6 Q (BY MR. FRANCOMANO) When did you write this report?

7 MR. MARTINEZ: Your Honor, I don't believe that was
8 the question pending at the time he asked to have his
9 recollection -- Mr. Francomano --

10 THE COURT: Technically it wasn't. But did reading
11 that report refresh your recollection about when you wrote the
12 report?

13 THE WITNESS: I can't say exactly when I started
14 typing.

15 THE COURT: I'm not asking you that question. I'm
16 asking whether or not the report refreshed your memory.

17 THE WITNESS: Yes.

18 THE COURT: Now, when did you write the report?

19 THE WITNESS: The report would have been written
20 probably about an hour or so after the incident. That's when
21 I would have written a report.

22 THE COURT: Next question.

23 Q (BY MR. FRANCOMANO) So the report that you wrote an hour
24 afterwards didn't have in there that the same person you saw
25 was the same person you saw in the bushes; is that correct?

1 THE COURT: The same person you saw was the same
2 person you saw in the bushes.

3 MR. FRANCOMANO: I'll rephrase, Your Honor.

4 Q (BY MR. FRANCOMANO) The same person you saw running down
5 Quail was the same person you saw in the bushes; correct?

6 A No, I did not write that in the report. You're right,
7 sir.

8 Q You spoke about a handgun that you found in
9 126 Pheasant Drive; correct?

10 A Yes, sir.

11 Q What kind of gun was that?

12 A Smith and Wesson .38 caliber revolver.

13 Q Did you find any fingerprints on that gun?

14 A Did I? No, I didn't find any fingerprints on that gun.

15 Q Were any fingerprints -- was it tested for
16 fingerprints?

17 A I don't believe it was. I believe it was tested for
18 other evidence.

19 Q Were the shell casings tested that were found -- were
20 there any shell casings in the gun?

21 A Yes, I believe there were four rounds in the gun.

22 Q Were those rounds tested for fingerprints?

23 A I don't know if the rounds were tested for
24 fingerprints.

25 Q Was there any DNA test on the gun?

1 A Yes.

2 Q There was DNA test done on the gun?

3 A For the firearm, I believe so, yes, sir.

4 Q You believe so or there was?

5 A Pretty sure that firearm was tested for DNA evidence.

6 Q And that DNA evidence came back to anyone?

7 A If I remember correctly, from the supplemental report
8 information, the majority of the DNA evidence found from the
9 firearm came back to a female and minority evidence came back
10 to a male. But they did not come back to anybody in
11 particular.

12 Q So you no longer have that gun; correct?

13 A I no longer have the firearm, no, sir.

14 Q So there's no way to test it for fingerprints now or to
15 test it for anything, for DNA, anything like that; correct?

16 A I don't believe so.

17 Q Well, you haven't gotten the gun back and you can't get
18 it back; correct?

19 A I have no idea if we can get the gun back or not. It was
20 returned to the owner, I want to say maybe two or three years
21 ago.

22 Q You stated that you spoke to Mr. McCants and he gave you
23 a statement; is that right?

24 A Yes.

25 Q Okay. He said he was there visiting his girlfriend?

1 A Yes, sir.

2 Q All right. And you stated that he said no one else was
3 involved?

4 A Yes.

5 Q But he wasn't -- he didn't say that he was involved in
6 any type of crime or any type of incident. He said he was
7 there watching a movie with his girlfriend; correct?

8 A I believe when I asked him how he met his girlfriend he
9 said that he was watching a movie with his girlfriend. I
10 don't recall questioning him what he was doing at the house
11 that night.

12 Q So I guess my question is, he never said to you he was
13 committing a crime at the house that night; correct?

14 A He never said he was committing a crime at the house that
15 night.

16 MR. FRANCOMANO: I have no further questions.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 BY MR. MARTINEZ:

20 Q Corporal, when you took Mr. McCants -- yeah, when you
21 took Mr. McCants back to the police department and you asked
22 him questions --

23 A Yes, sir.

24 Q -- were you asking him questions about the robbery?

25 A I was.

1 Q And were you asking him questions about the robbery when
2 he said that no one else was involved?

3 A Yes, sir.

4 MR. MARTINEZ: No further questions.

5 THE COURT: May the witness be excused?

6 MR. FRANCOMANO: Yes, Your Honor.

7 MR. BUSSARD: Yes.

8 THE COURT: You're excused. You may depart.

9 Mr. Martinez, any other evidence for the day?

10 MR. MARTINEZ: No, Your Honor, we got through our
11 witnesses today ahead of schedule.

12 THE COURT: Thank you. Ladies and gentlemen, we
13 will now recess for the day. During the overnight recess do
14 not discuss the case with anyone. Do not discuss it with your
15 fellow jurors. Do not discuss it with your friends or your
16 family members. Remember what I told you last week, if people
17 are quizzing you about your jury service, all you're allowed
18 to tell them is that you're serving on a jury in federal court
19 in a criminal case, that the trial's expected to last until
20 about the third week of January, that you've been instructed
21 by the judge that you're not allowed to speak to them about
22 the case while the trial is underway.

23 Do not allow yourselves to be exposed to any news
24 articles or reports that touch upon the case or the issues it
25 presents or the participants in the trial. Avoid all contact

1 of any kind with any of the participants in the trial. Do not
2 make any independent investigation of the law or the facts
3 relevant to the case. Do not conduct internet searches with
4 respect to the issues presented or the persons participating
5 in the trial. Do not consult external sources such as
6 encyclopedias or dictionaries in reference to the issues and
7 terms that have been presented to you here.

8 Ladies and gentlemen, we'll plan to start at 9:30
9 tomorrow morning. So please be here in anticipation of that
10 start time. I may have mentioned the fact that we will take a
11 longer lunch tomorrow because of a matter in which I must
12 participate. We'll probably break for lunch like we normally
13 do, sometime in the 1:00 to 1:30 time frame, but we will
14 definitely be on recess then until 3:00 o'clock because of
15 this other matter that I have to take up during that period of
16 time. The jury's excused overnight. Please take the jury
17 out.

18 (Jury left the courtroom.)

19 THE COURT: Be seated, please. Elkton is
20 August 26th, 2008?

21 MR. MARTINEZ: Yes, and Mr. McCants turned 18 on
22 June 30th of --

23 MR. FRANCOMANO: 2010, your Honor.

24 THE COURT: 2010, that's it, that's it. And he had
25 turned 18 earlier that summer, is that it?

1 MR. MARTINEZ: Correct.

2 MR. FRANCOMANO: Correct, Your Honor.

3 THE COURT: No disagreement about that. Thank you.
4 Anything else to take up outside the hearing of the jury,
5 Mr. Martinez?

6 MR. MARTINEZ: The only matter I wanted to mention,
7 Your Honor, is now it's been two weeks since we first raised
8 the issue of the expert disclosures that we got from defense
9 counsel in the case.

10 THE COURT: Yes.

11 MR. MARTINEZ: And I'm aware of what the Court's
12 view of the effect of the tardy disclosures was at the time.
13 It's two weeks later, we're in the second substantive week of
14 the trial, we have heard --

15 THE COURT: Are we going to call expert witnesses on
16 the defense side?

17 MR. FRANCOMANO: We're not, Your Honor.

18 THE COURT: Mr. Enzinna.

19 MR. ENZINNA: Yes, Your Honor, we do plan to call an
20 expert.

21 THE COURT: Mr. Bussard.

22 MR. BUSSARD: No, Your Honor.

23 THE COURT: Okay. So Mr. Enzinna, Mr. O'Toole,
24 you're going to call an expert witness. Has your expert
25 prepared a report?

1 MR. ENZINNA: He has not yet. He was only
2 authorized, I think last week. I spoke with him -- well, I
3 e-mailed him last night and we're going to speak one night
4 this week and I hope to have his report by next week.

5 THE COURT: You hope to have his report by next
6 week. Okay. There's your update.

7 MR. MARTINEZ: Well, I think we'll just note a
8 continuing objection to the way this is playing out and to
9 being forced to prepare to digest what an expert has to say
10 and to cross-examine someone in the middle of our case in
11 chief. I think Rule 16 says what it says about early
12 disclosures for a reason.

13 THE COURT: I understand your position. And
14 Mr. Enzinna, as soon as that report has been prepared, I'll
15 expect you to produce it and advise the Court that you have
16 done so.

17 MR. ENZINNA: Yes, sir.

18 THE COURT: Anything else, Mr. Martinez?

19 MR. MARTINEZ: No, Your Honor.

20 THE COURT: Anything else on the defense side before
21 we recess for the evening?

22 MR. FRANCOMANO: No, Your Honor.

23 THE COURT: Okay. 9:30 tomorrow morning. We're in
24 recess. Defendants are remanded.

25 (The proceedings were concluded.)

1 I, Christine Asif, RPR, FCRR, do hereby certify that
2 the foregoing is a correct transcript from the stenographic
record of proceedings in the above-entitled matter.

3 _____/s/_____
4 Christine T. Asif
5 Official Court Reporter

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